

# **ATTACHMENT 52**

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

IN RE: PROCESSED EGG PRODUCTS :  
ANTITRUST LITIGATION :  
-----: MDL No. 2002  
THIS DOCUMENT APPLIES TO: : 08-MD-02002  
ALL ACTIONS :

\* \* \* \* \*

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VIDEOTAPED 30(b)(6) DEPOSITION OF WILLIAM REHM

TAKEN AT: Godfrey & Kahn

LOCATED AT: 780 North Water Street

Milwaukee, WI

July 10, 2013

9:25 a.m. to 4:44 p.m.

REPORTED BY ANITA K. FOSS

REGISTERED PROFESSIONAL REPORTER

\* \* \* \* \*

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<p>1 APPEARANCES</p> <p>2 DINSMORE &amp; SHOHL, LLP, by</p> <p>3 Mr. Thomas L. Czechowski</p> <p>4 1100 Courthouse Plaza, SW</p> <p>5 Dayton, OH 45402</p> <p>6 (937) 463-4928</p> <p>7 thomas.czechowski@dinsmore.com</p> <p>8 Appearing telephonically on behalf of Weaver</p> <p>9 Brothers.</p> <p>10 LOVELL, STEWART, HALEBIAN &amp; JACOBSON, by</p> <p>11 Mr. Merrick Rayle</p> <p>12 61 Broadway, Suite 501</p> <p>13 New York, NY 10006</p> <p>14 (212) 608-1900</p> <p>15 Appearing telephonically on behalf of indirect</p> <p>16 purchaser plaintiffs.</p> <p>17 GIBSON, DUNN &amp; CRUTCHER, LLP, by</p> <p>18 Mr. Jason C. McKenney</p> <p>19 2100 McKinney Avenue</p> <p>20 Dallas, TX 75201-6912</p> <p>21 (214) 698-3279</p> <p>22 jmckenney@gibsondunn.com</p> <p>23 Appearing telephonically on behalf of Cal-Maine</p> <p>24 Foods.</p> <p>25 PORTER, WRIGHT, MORRIS &amp; ARTHUR, by</p> <p>Ms. Karri Allen and</p> <p>Mr. John C. Monica, Jr.</p> <p>1919 Pennsylvania Avenue, NW, Suite 500</p> <p>Washington, DC 20006</p> <p>(202) 778-3056</p> <p>kallen@porterwright.com</p> <p>Appearing telephonically on behalf of Rose Acre</p> <p>Farms.</p> <p>FAEGRE BAKER DANIELS, by</p> <p>Mr. Ryan M. Hurley</p> <p>300 North Meridian Street, Suite 2700</p> <p>Indianapolis, IN 46204-1750</p> <p>(317) 237-1144</p> <p>ryan.hurley@faegrebd.com</p> <p>Appearing telephonically on behalf of Midwest</p> <p>Poultry Services.</p>	<p>1 EXHIBITS</p> <p>2 Exhibit No. Description Page Identified</p> <p>3 Exhibit 8 Article by Edward Clark titled</p> <p>4 Industry Executives Are Optimistic</p> <p>5 This Will Be a Profitable Year</p> <p>6 Because Companies Are Streamlining</p> <p>7 Layer Numbers to Compensate For</p> <p>8 Corn Prices. . . . . 123</p> <p>9 Exhibit 9 Bates DAY0013631 through DAY0013636.</p> <p>10 Letter from Sunny Fresh. . . . . 143</p> <p>11 Exhibit 10 UEP board of directors 1/25/05</p> <p>12 meeting minutes. Bates DAY0028028</p> <p>13 through DAY0028035. . . . . 156</p> <p>14 Exhibit 11 Bates DAY0020542. Letter from Mike</p> <p>15 Luke err dated 11/7/2003. . . . . 166</p> <p>16 Exhibit 12 Daybreak Foods Inc.'s responses and</p> <p>17 objections to direct purchaser</p> <p>18 plaintiff's first set of</p> <p>19 interrogatories. . . . . 173</p> <p>20 Exhibit 13 Bates DAY0021496 to DAY0021502. . 190</p> <p>21 Exhibit 14 Document entitled Memorandum.</p> <p>22 Bates DAY0014292 to DAY0014294. . 198</p> <p>23 Exhibit 15 Bates DAY0024746 to DAY0024748. . 207</p> <p>24 Exhibit 16 E-mail, Bates DAY0003359 through</p> <p>25 DAY0003360. . . . . 217</p> <p>Exhibit 17 Bates DAY0003559. E-mail. . . . 221</p> <p>Exhibit 18 Chain e-mail, Bates DAY0002644</p> <p>to DAY0002645. . . . . 225</p> <p>Exhibit 19 E-mail chain. Bates DAY0005094</p> <p>through DAY0005095. . . . . 230</p> <p>Exhibit 20 E-mail to Pat at Daybreak Foods</p> <p>DAY0002648. . . . . 243</p>

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<p>1 EXHIBITS</p> <p>2 Page</p> <p>3 Exhibit No. Description Identified</p> <p>4 Exhibit 21 DAY-DATA000004. Second two pages</p> <p>5 are extracts from DAY-DATA000001. .262</p> <p>6 Exhibit 22 Bates MFI0299891 through 914. Supply</p> <p>7 Agreement Confidential. . . . .282</p> <p>8 Exhibit 23 Bates DAY0003611. E-mail from</p> <p>9 Gene Gregory. . . . .289</p> <p>10 (Original exhibits attached to original</p> <p>11 transcript. Copies provided to all counsel.)</p> <p>12 REQUESTS</p> <p>13 (There were no requests made.)</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 Publix Supermarkets, and SuperValu, Inc.</p> <p>2 MR. ONDECK: Chris Ondeck, O-N-D-E-C-K,</p> <p>3 from the law firm of Crowell &amp; Moring in</p> <p>4 Washington, D.C., representing Daybreak Foods and</p> <p>5 the witness today.</p> <p>6 MS. KANTOR: Elisa Kantor, also from</p> <p>7 Crowell &amp; Moring, for Daybreak.</p> <p>8 MR. GREENE: William Greene from the law</p> <p>9 firm of Leonard, Street &amp; Deinard on behalf of</p> <p>10 defendant Michael Foods.</p> <p>11 MR. ARANOFF: There are also a number of</p> <p>12 folks representing the direct purchaser class</p> <p>13 plaintiffs and defendants that have already entered</p> <p>14 appearances for the purposes of the court reporter,</p> <p>15 and the court reporter will indicate their presence</p> <p>16 on the transcript.</p> <p>17 WILLIAM REHM, called as a witness</p> <p>18 herein, having been first duly sworn on oath,</p> <p>19 was examined and testified as follows:</p> <p>20 EXAMINATION</p> <p>21 BY MR. ARANOFF:</p> <p>22 Q. Good morning, Mr. Rehm. As I said, my</p> <p>23 name is Ron Aranoff. I had the pleasure of meeting</p> <p>24 you just a few moments ago. Could you, for the</p> <p>25 record, please state your name, your business</p>
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<p>1 TRANSCRIPT OF PROCEEDINGS</p> <p>2 (Exhibits 1 through 3 marked for identification.)</p> <p>3 THE VIDEOGRAPHER: My name is Mark Lyle,</p> <p>4 representing Veritext. Today's date is July 10,</p> <p>5 2013. The time is approximately 9:25 a.m. This</p> <p>6 deposition is being held at the offices of Godfrey</p> <p>7 &amp; Kahn, 780 North Water Street, Milwaukee,</p> <p>8 Wisconsin. This is in the Processed Eggs Products</p> <p>9 litigation, case pending in the US District Court</p> <p>10 for the Eastern District of Pennsylvania.</p> <p>11 The name of the witness is William</p> <p>12 Rehm. And the court reporter today is Anita Foss</p> <p>13 of Veritext. First we'll have counsel present</p> <p>14 introduce themselves and state who they represent,</p> <p>15 and then we'll have the court reporter swear in the</p> <p>16 witness.</p> <p>17 MR. ARANOFF: Thank you. Ronald Aranoff,</p> <p>18 Bernstein Liebhard, LLP, 10 East 40th Street, New</p> <p>19 York, on behalf of the direct purchaser class</p> <p>20 plaintiffs.</p> <p>21 MR. GREENBAUM: Cory Greenbaum, Bernstein</p> <p>22 Liebhard, LLP, same address, and also on behalf of</p> <p>23 the direct purchaser plaintiffs.</p> <p>24 MR. BJORK: John Bjork, Vanek, Vickers,</p> <p>25 Masini, on behalf of direct action plaintiffs,</p>	<p>1 address, and your current employment?</p> <p>2 A. William Rehm, Daybreak Foods. The</p> <p>3 address is 533 Tyranena Park Road, Lake Mills,</p> <p>4 Wisconsin.</p> <p>5 Q. And Mr. Rehm, have you ever been deposed</p> <p>6 before?</p> <p>7 A. Yes.</p> <p>8 Q. And when was that?</p> <p>9 A. Couple years ago.</p> <p>10 Q. Was that in conjunction with your role at</p> <p>11 the Daybreak Foods?</p> <p>12 A. Yes.</p> <p>13 Q. And what was the nature of that</p> <p>14 testimony, please?</p> <p>15 A. It was in connection with a neighborhood</p> <p>16 dispute.</p> <p>17 Q. Involving your business?</p> <p>18 A. Yes.</p> <p>19 Q. Could you give me just briefly some of</p> <p>20 the details of that?</p> <p>21 A. It was an expansion process that we were</p> <p>22 going through in the state of Ohio, and the</p> <p>23 neighborhood decided they would prefer we not</p> <p>24 expand our facility.</p> <p>25 Q. So this was more of a zoning type of --</p>

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<p>1 A. Yes.</p> <p>2 Q. -- type of issue that you were -- had</p> <p>3 nothing to do with the sale of eggs or -- or any</p> <p>4 other part of your business other than your</p> <p>5 expansion of your facility; is that correct?</p> <p>6 A. Correct.</p> <p>7 Q. Okay. Have you been deposed in any other</p> <p>8 matter before?</p> <p>9 A. I don't recall.</p> <p>10 Q. Okay. Have you ever given any sworn</p> <p>11 testimony in any other setting other than in the</p> <p>12 case that you're here for today?</p> <p>13 A. No.</p> <p>14 Q. I know you've been deposed before; I just</p> <p>15 want to go over, before we begin, some just basic</p> <p>16 procedures with respect to the depositions, make</p> <p>17 the deposition a little easier for both of us. I'm</p> <p>18 going to be asking you a series of questions today.</p> <p>19 You've been sworn and you understand that you're</p> <p>20 testifying today under oath; is that correct?</p> <p>21 A. Correct.</p> <p>22 Q. Okay. Is there any reason you can think</p> <p>23 of today that you would not be able to testify</p> <p>24 truthfully?</p> <p>25 A. No.</p>	<p>1 just take a quick look at that if you wouldn't</p> <p>2 mind.</p> <p>3 MR. ONDECK: Ron, while he's looking at</p> <p>4 that, can I note for the record a standing</p> <p>5 objection to the participation of an attorney for</p> <p>6 the indirect purchaser plaintiffs, who I believe is</p> <p>7 Mr. Rayle, R-A-Y-L-E, as Daybreak has been</p> <p>8 dismissed from that case. And that's a standing</p> <p>9 objection. And we can continue the deposition.</p> <p>10 MR. ARANOFF: Okay. I mean, I think</p> <p>11 that, just to follow up on that for a second,</p> <p>12 Chris, I think what we decided before the</p> <p>13 deposition was that we had agreed that all</p> <p>14 objections, except for those with respect to form</p> <p>15 and privilege, would be preserved and reserved for</p> <p>16 some future time for potential adjudication by the</p> <p>17 court or whomever.</p> <p>18 MR. ONDECK: Preserved, yes, I agree.</p> <p>19 MR. ARANOFF: Okay.</p> <p>20 MR. GREENE: Ron, can you put on the</p> <p>21 record what 1 through 3 are?</p> <p>22 MR. ARANOFF: Yeah. I'm just letting the</p> <p>23 witness take a look at it.</p> <p>24 MR. GREENE: Okay. Thank you.</p> <p>25 BY MR. ARANOFF:</p>
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<p>1 Q. Is there any reason that you can think</p> <p>2 about today that would affect your ability to</p> <p>3 recall events in the normal course?</p> <p>4 A. No.</p> <p>5 Q. Your lawyer may interpose objections</p> <p>6 during the course of today's deposition. If he</p> <p>7 does so, unless he's objecting on the basis of</p> <p>8 privilege and instructing you not to answer,</p> <p>9 notwithstanding the fact that he's objecting,</p> <p>10 you're still going to be responsible to answer my</p> <p>11 questions. Do you understand that?</p> <p>12 A. Yes.</p> <p>13 MR. ONDECK: Objection.</p> <p>14 BY MR. ARANOFF:</p> <p>15 Q. Okay. If you need to take a break during</p> <p>16 the course of the deposition, as long as there's no</p> <p>17 pending question, I'm happy to try to accommodate a</p> <p>18 reasonable break schedule, okay? If you have to</p> <p>19 use the men's room or something like that, we'll</p> <p>20 try to accommodate you as quickly as we possibly</p> <p>21 can. All right?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. Could you -- I'd like to show you</p> <p>24 what's been previously marked as Exhibits 1, 2 and</p> <p>25 3 for purposes of identification. I'd ask you to</p>	<p>1 Q. Mr. Rehm, just let me know when you've</p> <p>2 had a chance to look at it, then I can ask you a</p> <p>3 series of questions, okay?</p> <p>4 A. Yes.</p> <p>5 MR. DAVIS: Excuse me. This is Evan</p> <p>6 Davis. If we could also get the Bates numbers of</p> <p>7 documents being shown to the witness.</p> <p>8 MR. ARANOFF: You can. These are</p> <p>9 deposition notices and a letter that was sent from</p> <p>10 Elisa Kantor yesterday to various plaintiffs.</p> <p>11 They're not Bates numbered, that's why I haven't</p> <p>12 indicated them.</p> <p>13 MR. DAVIS: Thank you.</p> <p>14 MR. ONDECK: Ron, also while Mr. Rehm is</p> <p>15 looking at the documents, I just want to note for</p> <p>16 the record that some of the questions we anticipate</p> <p>17 will adduce highly confidential information as to</p> <p>18 Daybreak's business, and so we're going to want to</p> <p>19 go through the process to mark -- we want the</p> <p>20 entire deposition transcript as highly</p> <p>21 confidential, and then we'll want to go through the</p> <p>22 process of marking the specific portions which are</p> <p>23 highly confidential under the protective order.</p> <p>24 MR. ARANOFF: Well, if you mark -- I mean</p> <p>25 I don't have an objection to that, but if you're</p>

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<p>1 marking the whole deposition highly confidential, I</p> <p>2 don't know why you need to go through the</p> <p>3 transcript and otherwise mark it. But I leave that</p> <p>4 up to you.</p> <p>5 MR. ONDECK: The whole transcript may not</p> <p>6 eventually be highly confidential.</p> <p>7 MR. ARANOFF: Okay.</p> <p>8 THE WITNESS: Ron?</p> <p>9 BY MR. ARANOFF:</p> <p>10 Q. All set?</p> <p>11 A. Yes.</p> <p>12 Q. So for purposes of identification, I've</p> <p>13 shown you what's been marked as Rehm 1. Take a</p> <p>14 look at it. Is it fair to say that this document</p> <p>15 is a deposition notice for you to appear here today</p> <p>16 in your individual capacity as a witness for</p> <p>17 Daybreak Farms?</p> <p>18 A. No.</p> <p>19 Q. Okay. What do you understand Exhibit 1</p> <p>20 to be?</p> <p>21 A. You referenced it as Daybreak Farms.</p> <p>22 That's not our company.</p> <p>23 Q. Daybreak Foods. I'm sorry, I misspoke.</p> <p>24 Is that accurate?</p> <p>25 A. Yes.</p>	<p>1 Mr. Rehm?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And if you look at page two of the</p> <p>4 document, you'll notice that in the middle of the</p> <p>5 page there are a number of topics that your</p> <p>6 counsel, Ms. Kantor, has indicated you would not be</p> <p>7 prepared to talk about today as a corporate</p> <p>8 designee for Daybreak Foods?</p> <p>9 MR. ONDECK: Objection, foundation, legal</p> <p>10 advice. You can answer.</p> <p>11 BY MR. ARANOFF:</p> <p>12 Q. Do you see -- do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. So first let me, before we get to</p> <p>15 the actual topics for a second, is it fair to say</p> <p>16 that Mr. Ondeck, Christopher Ondeck, sitting next</p> <p>17 to you is your counsel representing you in this</p> <p>18 matter?</p> <p>19 A. Mr. Ondeck represents Daybreak Foods and</p> <p>20 myself, yes.</p> <p>21 Q. So he represents both your company;</p> <p>22 correct?</p> <p>23 A. Yes.</p> <p>24 Q. As well as you individually for the</p> <p>25 purposes of this deposition and for the purposes of</p>
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<p>1 Q. If you take a look at Exhibit 2,</p> <p>2 Exhibit 2 is plaintiff's notice of deposition under</p> <p>3 Rule 30(b)(6) to defendant Daybreak Foods,</p> <p>4 Incorporated. Do you recognize this document?</p> <p>5 A. Yes.</p> <p>6 Q. Do you understand that you're testifying</p> <p>7 today as a corporate representative for Daybreak</p> <p>8 Foods, Incorporated?</p> <p>9 A. Yes.</p> <p>10 Q. And you'll notice that in the document,</p> <p>11 beginning on page four, there's a schedule A</p> <p>12 attached to what's been marked as Rehm Exhibit 2</p> <p>13 for identification. And you understand that with</p> <p>14 the exception of a number of these topics, which</p> <p>15 we'll discuss in a second, you are the corporate</p> <p>16 representative charged with speaking on behalf of</p> <p>17 Daybreak Foods on behalf of these topics; is that</p> <p>18 correct?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. If you turn now to what's been</p> <p>21 marked as Rehm Exhibit 3 for purposes of</p> <p>22 identification. This is a letter that was sent</p> <p>23 from Elisa Kantor at Crowell Moring to Steven</p> <p>24 Asher, William Blechman, and Krishna Narine. And</p> <p>25 it's dated July 8, 2013. Do you see that,</p>	<p>1 this case; is that correct?</p> <p>2 A. Yes.</p> <p>3 Q. And Ms. Kantor is also a lawyer working</p> <p>4 together with Mr. Ondeck, and she also represents</p> <p>5 you in this matter; is that correct?</p> <p>6 A. Yes.</p> <p>7 Q. And she also represents Daybreak Foods</p> <p>8 with respect to this action?</p> <p>9 A. Yes.</p> <p>10 Q. Is there anybody else that represents you</p> <p>11 in this case other than Ms. Kantor, Mr. Ondeck, or</p> <p>12 the people that are at his firm?</p> <p>13 A. No.</p> <p>14 Q. Okay. Turning again to Exhibit 3 and the</p> <p>15 topics that are indicated that you are not prepared</p> <p>16 to speak about today, we look at number one, topic</p> <p>17 17, it says that you're not prepared to discuss,</p> <p>18 "Your contacts with any member or other</p> <p>19 representative of the United Potato Growers</p> <p>20 Association." Do you see where I'm reading?</p> <p>21 A. Yes.</p> <p>22 Q. Who at Daybreak Foods would be the person</p> <p>23 most knowledgeable about that topic?</p> <p>24 A. No one.</p> <p>25 Q. There's not a person at Daybreak Foods</p>

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<p>1 that would have any knowledge about United Potato</p> <p>2 Growers Association; is that accurate?</p> <p>3 A. That's correct.</p> <p>4 Q. Okay. Topic 18, the transactional data</p> <p>5 you produced as part of the written discovery</p> <p>6 process. Who at Daybreak Foods would be the person</p> <p>7 most knowledgeable about that topic?</p> <p>8 MR. ONDECK: Objection, I'm going to</p> <p>9 object to this line of questioning. This is a</p> <p>10 legal document, has legal conclusions in it.</p> <p>11 There's -- the proper way to respond to this would</p> <p>12 have been a meet-and-confer with us. So I'm going</p> <p>13 to object to this entire line of questioning. The</p> <p>14 meet-and-confer cannot be with the witness.</p> <p>15 BY MR. ARANOFF:</p> <p>16 Q. Okay. Who at the firm -- who at Daybreak</p> <p>17 Foods would be the appropriate person with which to</p> <p>18 talk about the transactional data that was produced</p> <p>19 as part of your written discovery process?</p> <p>20 MR. ONDECK: Same objection.</p> <p>21 BY MR. ARANOFF:</p> <p>22 Q. You can answer that question.</p> <p>23 A. Myself.</p> <p>24 Q. Okay. If you look at topic No. 28, it</p> <p>25 says, "Your document storage locations, methods,</p>	<p>1 production. Who, if not you, would be the</p> <p>2 appropriate person to discuss this topic on behalf</p> <p>3 of Daybreak Foods?</p> <p>4 MR. ONDECK: Same objection.</p> <p>5 THE WITNESS: Not sure.</p> <p>6 BY MR. ARANOFF:</p> <p>7 Q. Did you do any kind of search for</p> <p>8 documents in response to any document request that</p> <p>9 was propounded on Daybreak Foods?</p> <p>10 MR. ONDECK: Objection.</p> <p>11 THE WITNESS: Repeat that, please.</p> <p>12 BY MR. ARANOFF:</p> <p>13 Q. Have you ever been asked by anyone to</p> <p>14 look for documents with respect to this case?</p> <p>15 A. Yeah.</p> <p>16 MR. ONDECK: Objection, calls for legal</p> <p>17 advice.</p> <p>18 THE WITNESS: Yes.</p> <p>19 MR. ARANOFF: Are you instructing the</p> <p>20 witness not to answer?</p> <p>21 MR. ONDECK: No.</p> <p>22 MR. ARANOFF: Okay.</p> <p>23 THE WITNESS: We followed the</p> <p>24 instructions of our legal counsel.</p> <p>25 BY MR. ARANOFF:</p>
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<p>1 and techniques, including your maintenance of</p> <p>2 electronic records." Who at Daybreak Foods would</p> <p>3 be the most appropriate person to talk about that</p> <p>4 topic?</p> <p>5 MR. ONDECK: Same objection.</p> <p>6 THE WITNESS: Our IT gentlemen.</p> <p>7 BY MR. ARANOFF:</p> <p>8 Q. And Mr. Rehm, who is that person at</p> <p>9 Daybreak Foods?</p> <p>10 A. Mark Tucker and Loren Ash.</p> <p>11 MR. ONDECK: I object to that answer.</p> <p>12 Move to strike.</p> <p>13 BY MR. ARANOFF:</p> <p>14 Q. Okay. Topic 29, "All actions that you</p> <p>15 took to preserve documents and other information</p> <p>16 for this litigation." Who would be the most</p> <p>17 appropriate person at Daybreak Foods to discuss</p> <p>18 that topic?</p> <p>19 MR. ONDECK: Same objection.</p> <p>20 THE WITNESS: Myself.</p> <p>21 MR. ONDECK: I object to that answer.</p> <p>22 Move to strike.</p> <p>23 BY MR. ARANOFF:</p> <p>24 Q. Topic 30, your search for documents to be</p> <p>25 produced in response to plaintiff's request for</p>	<p>1 Q. I'm not asking you to give me any</p> <p>2 information that your legal counsel may have</p> <p>3 communicated to you. I'm saying did you conduct</p> <p>4 at any point in time, a search for responsive</p> <p>5 documents in conjunction with this litigation?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. When was that done, Mr. Rehm?</p> <p>8 A. I don't recall.</p> <p>9 Q. Was it done in the last six months?</p> <p>10 A. I don't recall the specific time.</p> <p>11 Q. Give me a ballpark time.</p> <p>12 MR. ONDECK: Objection, asked and</p> <p>13 answered.</p> <p>14 BY MR. ARANOFF:</p> <p>15 Q. You can answer.</p> <p>16 A. Subsequent to the start of the</p> <p>17 litigation.</p> <p>18 Q. Okay. Topic 37, your search for and</p> <p>19 production of data and reports on egg retail</p> <p>20 pricing from services such as IRI, AC Nielsen, or</p> <p>21 other third-party reporting services.</p> <p>22 MR. ONDECK: Same objection.</p> <p>23 BY MR. ARANOFF:</p> <p>24 Q. I haven't even asked the question yet.</p> <p>25 Who at Daybreak Foods would be the most</p>

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<p>1 knowledgeable person to discuss this topic, 2 Mr. Rehm? 3 A. No one. 4 Q. Why is that? 5 A. We don't utilize or look at any of those 6 things. 7 Q. Okay. Thank you. I'm done with those 8 documents. You can put them away. 9 MR. ONDECK: Mrs. Court Reporter, where 10 do you want the witness' exhibits to go? 11 (Discussion held off the record.) 12 BY MR. ARANOFF: 13 Q. Okay. Mr. Rehm, could you please provide 14 me briefly with a bit about your educational 15 background, particularly where you went to college, 16 any post-college degrees that you might have, any 17 other seminars or courses that would comprise part 18 of your education. 19 A. I have a BS degree from St. Norbert 20 College in DePere, Wisconsin with a degree in 21 business administration, emphasis in accounting. 22 I'm a licensed certified public accountant. With 23 regard to your question on seminars, too expansive 24 to try to even list. 25 Q. Fair enough. Do you have any degree in</p>	<p>1 Q. I'm sorry, I didn't hear you. 2 A. Row cropping. 3 Q. What is row cropping? 4 A. Putting seeds in the ground, growing corn 5 and soybeans. 6 Q. Okay. Any other type of degree in terms 7 of scientific degree? I know you have a BS in 8 accounting. 9 A. I listed all my degrees, sir. And I do 10 not have a degree in agriculture, I just have 11 experience. 12 Q. What about any other science background? 13 A. No. 14 Q. You testified that you were a CPA. Did 15 you ever practice as a certified public accountant? 16 A. Yes. 17 Q. For how many years? 18 A. Nine or ten. 19 Q. And where were you a CPA? 20 A. At the time, the firm was called Virchow 21 Krause. V-I-R-C-H-O-W. Krause, K-R-A-U-S-E. It's 22 now known as Baker Tilly. 23 Q. And where is that accounting practice 24 located? 25 A. I practiced in Watertown, Wisconsin.</p>
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<p>1 economics? 2 A. No. 3 Q. Do you have any degree in marketing? 4 A. No. 5 Q. Do you have any degree in agriculture? 6 A. No. 7 Q. Any kind of -- what I mean by that -- you 8 look puzzled, so let me try to clarify a little 9 bit. Do you have any agricultural background? 10 A. Yes. 11 Q. What's the basis for your agricultural 12 background? 13 A. Hands-on experience. 14 Q. And when you say hands-on experience, are 15 you talking specifically about the work that you 16 performed at Daybreak Foods? 17 A. Worked on the farm. 18 Q. And in particular, when you say "the 19 farm," you mean with respect to eggs and egg 20 products? 21 A. With respect to egg production and pullet 22 growing, yes. 23 Q. Any other experience in agriculture other 24 than just -- what you've just described? 25 A. Row cropping.</p>	<p>1 Q. Do you have any idea where they're 2 actually headquartered? 3 A. Madison, Wisconsin. 4 Q. Did you work in any particular department 5 while you did your CPA work? Were you -- did you 6 use your farming background at all with respect to 7 the kind of accounting practice that you performed? 8 A. Actually, no. 9 Q. What kind of clients, very generally, did 10 you work on? 11 A. Manufacturers. 12 Q. Manufacturers of what? 13 A. Any number of things. 14 Q. Is that the area that this accounting 15 firm specializes in? 16 A. No. 17 Q. What do they specialize in, if you know? 18 A. They did generally everything. 19 Q. And you were there, you said, for about 20 nine-and-a-half, ten years? 21 A. About nine or ten years, yes. 22 Q. And after you finished working in the -- 23 as a CPA, you subsequently left that employment? 24 A. Yes. 25 Q. And where did you go after that?</p>

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<p>1 A. Daybreak Foods.</p> <p>2 Q. And Daybreak Foods was established when?</p> <p>3 A. My father established it in 19 -- I</p> <p>4 believe 1967 is the incorporation year.</p> <p>5 Q. And your father is Robert Rehm?</p> <p>6 A. Robert Rehm, yes.</p> <p>7 Q. Rehm. I'm sorry.</p> <p>8 A. That's okay.</p> <p>9 Q. Yeah, Robert Rehm?</p> <p>10 A. Senior.</p> <p>11 Q. All right. And why did you make the</p> <p>12 decision to go into your father's business?</p> <p>13 A. To a degree, disenchanted in the field I</p> <p>14 was in at public accounting, and the opportunities</p> <p>15 I thought were in front of me in the egg production</p> <p>16 processing business.</p> <p>17 Q. Okay. Can you briefly describe what</p> <p>18 those opportunities were?</p> <p>19 A. Just advancement in my career, ability to</p> <p>20 be more successful in the career, and provide for</p> <p>21 my family in a better way.</p> <p>22 Q. Okay. When you started at the</p> <p>23 company -- and when I say "the company," I'm</p> <p>24 referring of course to Daybreak Foods -- what was</p> <p>25 your initial position?</p>	<p>1 A. I need to correct that. I apologize.</p> <p>2 Q. No, that's fine.</p> <p>3 A. At the time I started, only my brother</p> <p>4 Brent was at the company.</p> <p>5 Q. And do you know what Brent's position was</p> <p>6 at the time?</p> <p>7 A. He was -- he worked in pullet growing.</p> <p>8 MR. ONDECK: Objection on the record. I</p> <p>9 might note the witness said pullet, P-U-L-L-E-T,</p> <p>10 growing. It'll be a term that's used a lot.</p> <p>11 BY MR. ARANOFF:</p> <p>12 Q. Does -- this is Burton you were talking</p> <p>13 about; correct?</p> <p>14 A. No.</p> <p>15 Q. This is who?</p> <p>16 A. Brent.</p> <p>17 Q. Brent. Brent is -- okay. So you have a</p> <p>18 brother Brent and you have another brother Burton;</p> <p>19 correct?</p> <p>20 A. Yes.</p> <p>21 Q. Your brother Burton, does he go by the</p> <p>22 nickname Tony?</p> <p>23 A. Yes.</p> <p>24 Q. What does -- is Brent still with the</p> <p>25 company today?</p>
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<p>1 A. I was either chief financial officer or</p> <p>2 treasurer. I don't recall which.</p> <p>3 Q. And do you have an understanding as you</p> <p>4 sit here today about what year you started at</p> <p>5 Daybreak Foods?</p> <p>6 A. 1991-ish.</p> <p>7 Q. Okay.</p> <p>8 A. '91, '92.</p> <p>9 Q. So is it fair to say you started at</p> <p>10 Daybreak Foods in 1991 and you believe that</p> <p>11 your -- the position you had at the time was CFO,</p> <p>12 or chief financial officer?</p> <p>13 A. Or treasurer. And I'm not sure if it was</p> <p>14 exactly '91 or if it was '92. Early -- very early</p> <p>15 '90s.</p> <p>16 Q. Okay. Do you have any siblings?</p> <p>17 A. Yes.</p> <p>18 Q. And did those siblings work at Daybreak</p> <p>19 Foods back when you started in '91?</p> <p>20 A. No, not all of them.</p> <p>21 Q. Which ones of them do?</p> <p>22 A. My two younger brothers.</p> <p>23 Q. And they are?</p> <p>24 A. Burton and Brent.</p> <p>25 Q. And --</p>	<p>1 A. Yes.</p> <p>2 Q. And what is his current title?</p> <p>3 A. He's responsible for our pullet, pullet,</p> <p>4 growing program.</p> <p>5 Q. That's P-U-L-L-E-T-T. Only one T;</p> <p>6 correct?</p> <p>7 A. Yes.</p> <p>8 Q. And what is -- and Burton's with the</p> <p>9 company as well; correct?</p> <p>10 A. You can call him Tony.</p> <p>11 Q. Tony's with the company as well?</p> <p>12 A. Yes.</p> <p>13 Q. What was his role in 1991, if you recall?</p> <p>14 A. Supervisor of one of our processing</p> <p>15 plants.</p> <p>16 Q. Which one?</p> <p>17 A. Long Prairie, Minnesota.</p> <p>18 Q. And is Tony still with the company today?</p> <p>19 A. Yes.</p> <p>20 Q. And what is his current title?</p> <p>21 A. Scheduling, marketing, and logistics.</p> <p>22 Q. Scheduling, marketing, and logistics?</p> <p>23 A. Yes.</p> <p>24 Q. What does that mean in terms of in</p> <p>25 laymen's terms? What does it mean to be in charge</p>

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<p>1 of scheduling?</p> <p>2 A. Because of the business model we</p> <p>3 incorporate with long-term contracts, Tony's</p> <p>4 responsible for scheduling the delivery times of</p> <p>5 all of our loads of -- of all of our loads of raw,</p> <p>6 liquid, unpasteurized egg to -- for each of the</p> <p>7 customers' facilities and each of the individual</p> <p>8 customers.</p> <p>9 Q. Okay. Let me -- okay. And when you say</p> <p>10 he's involved in marketing, what kind of marketing</p> <p>11 is Tony involved in?</p> <p>12 A. Some of our -- some of our contracts are</p> <p>13 for specific quantities of egg. We try to match</p> <p>14 our facility to a contract, but at times we may</p> <p>15 produce a load or two more than what the contract</p> <p>16 calls for. And he will market that into</p> <p>17 the -- into the public to another further</p> <p>18 processor.</p> <p>19 Q. So if you have more supply than you're</p> <p>20 required -- than you need at the current time, he's</p> <p>21 in charge of marketing it to other potential</p> <p>22 buyers?</p> <p>23 A. I wouldn't classify it in that way.</p> <p>24 Q. Okay. Could you clarify that for me</p> <p>25 then, please?</p>	<p>1 A. We have --</p> <p>2 Q. Okay. Go ahead, explain.</p> <p>3 A. Go ahead, ask the question.</p> <p>4 Q. No, no, you were in the middle of</p> <p>5 speaking and I was rude and I interrupted you. So</p> <p>6 I'm sorry.</p> <p>7 A. The products we produce are not</p> <p>8 consumable by the general public. They're raw,</p> <p>9 unpasteurized. So our customers -- we could very</p> <p>10 well be selling to one of our contracted customers.</p> <p>11 They -- however they utilize and what they do with</p> <p>12 it, I don't know. But you characterized it as the</p> <p>13 benefit. They have the opportunity to utilize that</p> <p>14 product in their process.</p> <p>15 Q. Okay. Let me -- let me just ask a few</p> <p>16 follow-up questions to that. First, as you</p> <p>17 mentioned, that you have three main customers; is</p> <p>18 that accurate?</p> <p>19 A. Correct.</p> <p>20 Q. Who are your three main customers?</p> <p>21 A. Cargill Kitchen Solutions, Michael Foods,</p> <p>22 and Deb-El Foods. D-E-B, hyphen, E-L, Foods.</p> <p>23 Q. And just so that we understand what we're</p> <p>24 talking about in terms of products, because that's</p> <p>25 obviously going to come up during the course of the</p>
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<p>1 A. Yes. Our model, our business model, is</p> <p>2 to produce and sell eggs on a contracted basis to</p> <p>3 our customers. We only have three main customers.</p> <p>4 And some of those contracts are make-it-take-it.</p> <p>5 Whatever we produce at the farm, our customer</p> <p>6 takes. If it's 20 loads or if it's 18 loads or</p> <p>7 it's 24 loads. Some of our contracts are for</p> <p>8 specific quantities. For example, one contract is</p> <p>9 for ten loads of liquid. Ten loads of liquid, raw,</p> <p>10 unpasteurized egg.</p> <p>11 And if our complex produces eleven,</p> <p>12 and our other complexes are in good balance, then</p> <p>13 Tony will take that one extra load and market it to</p> <p>14 another further processor for utilization in their</p> <p>15 further processing activities.</p> <p>16 Q. Okay. But it wouldn't go to one of your</p> <p>17 three main purchasers; is that correct?</p> <p>18 A. It could, yes.</p> <p>19 Q. So it's anybody who's in need at the time</p> <p>20 would get the benefit of the surplus; right?</p> <p>21 MR. ONDECK: Objection.</p> <p>22 THE WITNESS: I wouldn't characterize it</p> <p>23 as "get benefit of."</p> <p>24 BY MR. ARANOFF:</p> <p>25 Q. Okay. So --</p>	<p>1 deposition. Does -- can you describe for me,</p> <p>2 Mr. Rehm, the types of products that Daybreak Foods</p> <p>3 produces?</p> <p>4 A. The focus of our business is on the</p> <p>5 production of raw, unpasteurized, whole yolk and</p> <p>6 white eggs. In that our product is under contract,</p> <p>7 meets our customers' very specific specifications</p> <p>8 for bacterial counts, temperature, and quantity.</p> <p>9 And what we do is very difficult to be replicated</p> <p>10 by somebody that buys eggs in the open market and</p> <p>11 tries to sell to our same specific customers.</p> <p>12 Q. Do you know whether anybody else supplies</p> <p>13 the same product that you do to Cargill, Michael</p> <p>14 Foods and Deb-El Foods? In other words -- let me</p> <p>15 ask a better question. So strike that.</p> <p>16 Do you know whether Cargill buys the</p> <p>17 same product that you produce from any other</p> <p>18 source?</p> <p>19 A. They buy from a few other people as well,</p> <p>20 yes.</p> <p>21 Q. Who does Cargill buy from aside from you,</p> <p>22 to the best of your knowledge?</p> <p>23 A. Herbruck's Poultry Ranch in Michigan.</p> <p>24 Q. Anyone else?</p> <p>25 A. Not sure of the rest.</p>

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<p>1 Q. Okay. How about Michael Foods. Does 2 Michael Foods purchase the same product you sell 3 from any other sources? 4 A. They purchase similar products from 5 several other companies. 6 Q. I'm sorry, I misheard you. Did you say 7 several other companies? 8 A. Yes. 9 Q. Okay. 10 A. I'm not sure if I know the names of them 11 all. Fremont Farms. And I'm -- there's a couple 12 Fremont Farms, so I don't know if it's Fremont 13 Farms of Iowa or Fremont Farms. I'm not sure which 14 one. Center Fresh, to name a few. I'm not sure 15 the rest. 16 Q. Do you know whether Michael Foods, as an 17 example, purchases any of the same products that 18 you sell from any of the other defendants in this 19 action? 20 MR. ONDECK: Objection, beyond witness' 21 personal knowledge. 22 BY MR. ARANOFF: 23 Q. Well -- 24 A. I'm not sure. 25 Q. Do you know whether Deb-El Foods</p>	<p>1 his testimony. 2 THE WITNESS: No, no. 3 MR. ONDECK: Let me object, please. 4 THE WITNESS: I'm sorry. 5 BY MR. ARANOFF: 6 Q. The answer is not sometimes? 7 A. That's correct. 8 Q. Okay. So then maybe I misunderstood you. 9 Are there instances where Daybreak Foods, or any of 10 the farms that Daybreak Foods owns, sells shell 11 eggs as you've defined it? 12 A. Rarely. Rarely. 13 Q. Okay. To whom, to the best of your 14 knowledge, does Daybreak Foods sell shell eggs? 15 A. On the limited occasion that we've done 16 it, it's because of a -- we've acquired a facility 17 and are transitioning from what they did, which was 18 shell marketing, to what we purchased the facility 19 for, which was liquid. So we would have retained 20 or tried to maintain a relationship with that 21 company's existing customers through that 22 transition process till we could now produce 23 liquid, unpasteurized product. 24 Q. I understand that. But my question was 25 in the limited instances or, as you said, in the</p>
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<p>1 purchases any products similar to what you sell 2 from any other source? 3 MR. ONDECK: Same objection. 4 THE WITNESS: I'm not sure. 5 BY MR. ARANOFF: 6 Q. Does Daybreak Foods sell -- well, 7 withdrawn. Just lost my mic. Hold on a second. 8 A. If you go above your button -- 9 Q. Maybe it'll be better. Who knows. Okay. 10 Sorry about that. When I use the term "shell 11 eggs," do you have an understanding of what that 12 is? 13 A. Yes. 14 Q. What is a shell egg? 15 A. Shell egg is an egg that's marketed to 16 the retail market for consumption by the general 17 population. 18 Q. Does Daybreak Foods sell any shell eggs? 19 A. Only occasionally to help create a 20 transition from what the facility we may have 21 acquired did, to what we wanted it to do because of 22 the acquisition. 23 Q. So the answer is, essentially, sometimes; 24 correct? 25 MR. ONDECK: Objection, mischaracterizes</p>	<p>1 rare instances where you sell shell eggs, to whom 2 do you sell those shell eggs? 3 A. Don't know. 4 Q. Is there somebody at the company that 5 would have the answer to that question? 6 A. It is such a rare occasion, I don't know. 7 Q. When's the last time you can recall that 8 Daybreak Foods sold a shell egg to a single 9 customer? 10 A. '08. 11 Q. So it's your testimony today then, 12 Mr. Rehm, that Daybreak Foods has not sold a single 13 shell egg to a single customer in four to 14 five years; is that accurate? 15 MR. ONDECK: Objection. Sorry for 16 interrupting you. Objection, misstates prior 17 testimony. 18 BY MR. ARANOFF: 19 Q. You can answer. 20 A. I don't believe the -- I don't believe 21 the -- this action goes beyond 2008. I think it 22 stops there. 23 Q. That's -- that doesn't respond to my 24 question. My question is that do you -- going back 25 to what I had originally asked you. Do you recall</p>

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<p>1 any instances where Daybreak Foods sold a shell egg</p> <p>2 to any customer since 2008, which is I think what</p> <p>3 you testified to.</p> <p>4 MR. ONDECK: Objection, asked and</p> <p>5 answered.</p> <p>6 THE WITNESS: I don't believe --</p> <p>7 MR. ARANOFF: It wasn't asked and</p> <p>8 answered.</p> <p>9 THE WITNESS: I don't think that's the</p> <p>10 scope of this litigation.</p> <p>11 MR. ARANOFF: That's not for you to</p> <p>12 decide, Mr. Rehm. You're supposed to answer the</p> <p>13 questions that I ask and your counsel will</p> <p>14 interject objections as he sees fit.</p> <p>15 MR. ONDECK: I object to counsel</p> <p>16 testifying.</p> <p>17 MR. ARANOFF: Okay. But that's the way</p> <p>18 it goes.</p> <p>19 BY MR. ARANOFF:</p> <p>20 Q. So I'd ask for you to please answer my</p> <p>21 question.</p> <p>22 A. I will reemphasize: I don't believe it's</p> <p>23 a part of the scope of this litigation, to the best</p> <p>24 of my knowledge, that stops in 2008.</p> <p>25 Q. Okay.</p>	<p>1 shell eggs, even one, to Michael Foods?</p> <p>2 A. We did not sell any graded product to</p> <p>3 Michael Foods.</p> <p>4 Q. You seem to have made a distinction</p> <p>5 between shell eggs and graded product. What was</p> <p>6 the basis for that distinction?</p> <p>7 A. We may have sold breaking stock to</p> <p>8 Michael Foods in the interim. Let me -- we may</p> <p>9 have sold breaking stock to Michael Foods in the</p> <p>10 interim from an acquisition, to being able to</p> <p>11 produce raw, liquid, whole egg at one of our</p> <p>12 facilities.</p> <p>13 Q. Okay. Can you define for me what a</p> <p>14 graded egg is, please?</p> <p>15 A. A graded egg is one that runs through</p> <p>16 machinery that cleans it, washes it, sanitizes it</p> <p>17 and weighs it according to size, small, medium,</p> <p>18 large, extra large, jumbo.</p> <p>19 Q. And can you define a breaking egg,</p> <p>20 please?</p> <p>21 A. A breaking egg is one that --- I'd ask</p> <p>22 you more directly ask your question. I don't --</p> <p>23 Q. Do you know what a breaking egg is?</p> <p>24 A. Breaking stock?</p> <p>25 Q. Yes.</p>
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<p>1 A. However --</p> <p>2 Q. Yes?</p> <p>3 A. -- if you want an answer to that</p> <p>4 question, I would ask you to kindly restate your</p> <p>5 question.</p> <p>6 Q. Okay.</p> <p>7 MR. ARANOFF: Can the court reporter read</p> <p>8 back the last substantive question, please?</p> <p>9 COURT REPORTER: "Do you recall any</p> <p>10 instances where Daybreak Foods sold a shell egg to</p> <p>11 any customer since 2008, which is I think what you</p> <p>12 testified to."</p> <p>13 MR. ONDECK: Same objection.</p> <p>14 THE WITNESS: You would like a name of a</p> <p>15 customer?</p> <p>16 BY MR. ARANOFF:</p> <p>17 Q. Yes, please.</p> <p>18 A. Cargill Kitchen Solutions.</p> <p>19 Q. Anyone else that you can think of?</p> <p>20 A. Piggly Wiggly. That's a Wisconsin</p> <p>21 company only.</p> <p>22 Q. Okay.</p> <p>23 A. I think there's possibly Piggly</p> <p>24 Wigglys around the country, it's not --</p> <p>25 Q. At any point in time did you sell any</p>	<p>1 A. That's not a breaking egg.</p> <p>2 Q. Okay. What is a breaking stock?</p> <p>3 A. Breaking stock are eggs that are sold in</p> <p>4 the open market to companies that then convert that</p> <p>5 into liquid and process it for their purposes.</p> <p>6 Q. Does breaking stock often take the form</p> <p>7 of a shell egg?</p> <p>8 A. I don't know.</p> <p>9 Q. When I use the term "egg product," do you</p> <p>10 understand what that term means?</p> <p>11 A. I believe I understand my interpretation</p> <p>12 of egg product.</p> <p>13 Q. What is your understanding of an egg</p> <p>14 product?</p> <p>15 A. It's further processed product that is</p> <p>16 eventually pasteurized, cooked, packaged, frozen,</p> <p>17 dried, to name a few.</p> <p>18 Q. Is it your understanding that Daybreak</p> <p>19 Foods engages in the egg product business in</p> <p>20 general?</p> <p>21 A. No.</p> <p>22 Q. How would you characterize what Daybreak</p> <p>23 Foods does?</p> <p>24 A. Daybreak Foods is an egg production</p> <p>25 company that decides to market the egg it produces</p>

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<p>1 outside the shell, and sells raw, unpasteurized</p> <p>2 liquid products.</p> <p>3 Q. How does that differ from your definition</p> <p>4 of an egg product?</p> <p>5 A. Because all egg products, by USDA</p> <p>6 requirement and federal requirement, must be</p> <p>7 pasteurized for human consumption. The products</p> <p>8 that we produce cannot be consumed directly by</p> <p>9 anyone.</p> <p>10 Q. In other words, so is it fair to say that</p> <p>11 in order for your product to be useful to a</p> <p>12 potential buyer, it would have to be combined with</p> <p>13 some other process to make it useable?</p> <p>14 MR. ONDECK: Objection, misstates prior</p> <p>15 testimony.</p> <p>16 THE WITNESS: When you say "other buyer,"</p> <p>17 I don't know who you're talking about.</p> <p>18 BY MR. ARANOFF:</p> <p>19 Q. Well, when -- well, let me ask it a</p> <p>20 better way. What does, for example, Michael Foods</p> <p>21 do with your product, to the best of your</p> <p>22 knowledge, once it buys it?</p> <p>23 MR. GREENE: Objection. Go ahead.</p> <p>24 THE WITNESS: They pasteurize, cook it --</p> <p>25 could cook it, dry it, freeze it, or any other</p>	<p>1 A. Pasteurize, dry, freeze. And beyond</p> <p>2 that, I'm not sure. I know they do other things,</p> <p>3 but I'm not sure.</p> <p>4 Q. Okay. And what about Cargill?</p> <p>5 A. Pasteurize, aseptically package, cook.</p> <p>6 Q. Do you sell any --</p> <p>7 MR. ONDECK: Objection. Was the witness</p> <p>8 finished answering?</p> <p>9 THE WITNESS: Yes.</p> <p>10 MR. ARANOFF: Oh, I thought he was.</p> <p>11 THE WITNESS: No, you're fine.</p> <p>12 BY MR. ARANOFF:</p> <p>13 Q. Don't be shy about telling me --</p> <p>14 A. Telling you to shut up?</p> <p>15 Q. Yeah.</p> <p>16 A. No, I'm just kidding.</p> <p>17 Q. I try hard not to talk over you. Does</p> <p>18 Daybreak Foods sell product to a company called</p> <p>19 Sunny Fresh Farms?</p> <p>20 A. No.</p> <p>21 Q. Was there ever a point in time when you</p> <p>22 did?</p> <p>23 A. Not as Sunny Fresh Farms.</p> <p>24 Q. Okay. Was there any entity that sounds</p> <p>25 like Sunny Fresh Farms that you sold product to?</p>
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<p>1 number of things that further processors do with it</p> <p>2 BY MR. ARANOFF:</p> <p>3 Q. Would you characterize the product that</p> <p>4 you produce and that Daybreak produces as a raw</p> <p>5 material?</p> <p>6 MR. ONDECK: Objection.</p> <p>7 THE WITNESS: Our product is raw,</p> <p>8 unpasteurized.</p> <p>9 BY MR. ARANOFF:</p> <p>10 Q. Are you aware of any of the other</p> <p>11 defendants in this action that produce the same</p> <p>12 product, the raw, unpasteurized product that you</p> <p>13 just discussed, any other defendants in this</p> <p>14 litigation that produce the same product?</p> <p>15 A. I'm not sure what they produce.</p> <p>16 Q. Would your answer be the same as you just</p> <p>17 described with what Michael Foods does with what</p> <p>18 your product -- would the answer be the same for</p> <p>19 what you believe Deb-El and Cargill do with your</p> <p>20 product?</p> <p>21 A. They do different things, but at the end</p> <p>22 of the day, they both pasteurize it and make it</p> <p>23 ready for human consumption.</p> <p>24 Q. What does, to the best of your knowledge,</p> <p>25 Deb-El do with the product it purchases from you?</p>	<p>1 A. Sunny Fresh Foods.</p> <p>2 Q. How about Sunny Fresh Foods?</p> <p>3 A. Sunny Fresh Foods is Cargill Kitchen</p> <p>4 Solutions. It was a name change.</p> <p>5 Q. Do you have any idea when that name</p> <p>6 change took place?</p> <p>7 A. No.</p> <p>8 Q. Was it in the last ten years?</p> <p>9 A. Yeah, I believe so.</p> <p>10 Q. I think we were talking earlier, before</p> <p>11 we got off on somewhat of a tangent, about the job</p> <p>12 description for your brother Tony at the company.</p> <p>13 And I think you mentioned he has three jobs,</p> <p>14 scheduling, marketing, and then there was a third</p> <p>15 job.</p> <p>16 A. Logistics.</p> <p>17 Q. When you say that he was responsible for</p> <p>18 logistics, what in particular do you mean?</p> <p>19 A. If we don't deliver -- some of our</p> <p>20 products are delivered and some of our products are</p> <p>21 picked up. On the ones that are delivered, he</p> <p>22 schedules either our own tanker and power units to</p> <p>23 make the delivery or schedules outside vendors to</p> <p>24 come and pick them up and deliver on time.</p> <p>25 Q. Let's talk about your delivery for a</p>

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<p>1 second. Is it fair to say that you sell product 2 throughout the United States? 3 A. Predominantly, no. 4 Q. Predominantly, no? 5 A. We sell the bulk of our products in the 6 Midwest. 7 Q. I'll give you a second. 8 A. I apologize. Thank you. 9 Q. No, take your time. 10 A. Go ahead. No, go ahead, Ron. 11 Q. Do you have any -- I mean, I understand 12 what you said about predominantly you sell in the 13 Midwest, but do you have any customers, for 14 example, on the eastern seaboard? 15 A. Yes. 16 Q. And who are they? 17 A. Deb-El Foods. 18 Q. Okay. Any others that you can think of? 19 A. Michael Foods. 20 Q. Do you have any customers down south at 21 all? 22 A. No. 23 Q. No customers in places like Florida or 24 Texas or places like that? 25 A. That's correct.</p>	<p>1 sold under long-term contractual arrangements with 2 three main customers. The bulk of that is really 3 sold to two main customers, one being Michael 4 Foods, one being Cargill Kitchen Solutions. And 5 I'm -- I don't know where they sell their products 6 to. I assume that they cover the country. 7 BY MR. ARANOFF: 8 Q. And Cargill has been a steady customer of 9 Daybreak since you got to the company; is that 10 accurate? 11 A. As long as we reference Cargill and 12 Cargill Kitchen Solutions, if that's who you're 13 referencing. 14 Q. Yes. 15 A. Cargill Kitchen Solutions was the first 16 liquid customer of our company. 17 Q. Okay. And when we're talking about 18 Cargill and Cargill Kitchens, I mean to the extent 19 that there's a distinction in the corporate entity 20 at any point in time, I would appreciate if you 21 just point that out to me. Otherwise, I'm going to 22 assume that Cargill includes Cargill, Cargill 23 Kitchens and, from what I think you testified 24 earlier, also Sunny Fresh Foods. 25 MR. ONDECK: Objection.</p>
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<p>1 Q. Okay. Any customers on the west coast? 2 A. On a spot basis, we may have shipped, 3 during the course of this litigation, our raw, 4 unpasteurized egg to the west coast. 5 Q. Okay. Do you have -- 6 A. But again -- 7 Q. I'm sorry. 8 A. -- minimal. 9 Q. Do you have any understanding as to who 10 your customers are or who you would have sold to, 11 shall I say, on the west coast? Just an example. 12 A. No. 13 Q. But you're sure that you've sold product? 14 A. Somebody in Washington, the state of 15 Washington. 16 Q. So that's the Pacific northwest, west 17 coast; right? 18 A. That's west coast. 19 Q. Okay. Do you know whether any of the 20 customers to whom you sell, whether they sell their 21 product nationally, in other words, throughout the 22 United States? 23 MR. ONDECK: Objection. 24 THE WITNESS: The bulk of our products, 25 as I've told you and testified in the past, are</p>	<p>1 BY MR. ARANOFF: 2 Q. Is that fair? 'Cause I don't want to sit 3 and make that distinction every single time I ask 4 you a question. 5 A. When we started, the wholly-owned 6 subsidiary of Cargill was called Sunny Fresh Foods. 7 They changed the name to Cargill Kitchen Solutions. 8 So if I reference Cargill, I'm only referencing 9 Cargill Kitchen Solutions. If I intend to talk 10 about Cargill corporate, I will delineate that 11 specifically. 12 Q. Okay. Thank you. And we were talking 13 earlier about your -- just in terms of background, 14 your -- your other siblings. I know we talked 15 about Brent and Tony. I think you also have a 16 number of other siblings. I'll make -- 17 A. Not too many. 18 Q. -- little easier. Robert, Jr.? 19 A. Yes. 20 Q. Does he work at the company? 21 A. Today, no. 22 Q. Did he work at any point? 23 A. Yes. 24 Q. Okay. In what capacity? 25 A. Logistics.</p>

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<p>1 Q. Okay. And trying to be somewhat</p> <p>2 sensitive to this: Is there any specific</p> <p>3 reason -- he's no longer with the company today;</p> <p>4 right?</p> <p>5 A. He chose to take another path.</p> <p>6 Q. What line of work is he in now?</p> <p>7 A. You know, I'm not positive.</p> <p>8 Q. Okay. I'll leave that alone. You have</p> <p>9 another brother William?</p> <p>10 A. That would be me.</p> <p>11 Q. Oh, that's you. My mistake. Sorry. You</p> <p>12 have a sister Betsy; right?</p> <p>13 A. Elizabeth, yes. Betsy.</p> <p>14 Q. Is she involved at all with the company?</p> <p>15 A. Not anymore, no.</p> <p>16 Q. Has she ever been?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. When was that?</p> <p>19 A. I don't know when she started. She left</p> <p>20 in 2007-ish, 2008. My older brother and my</p> <p>21 youngest sister, my only sister, left employment</p> <p>22 with Daybreak at the same time.</p> <p>23 Q. Okay. And is Elizabeth married?</p> <p>24 A. Yes.</p> <p>25 Q. Does her husband work at Daybreak?</p>	<p>1 month.</p> <p>2 Q. I think you testified, just in terms of</p> <p>3 background, I think you testified earlier that you</p> <p>4 started out as either the treasurer or the CFO of</p> <p>5 the company roughly 1991?</p> <p>6 A. Correct.</p> <p>7 Q. And at some point did your position</p> <p>8 change?</p> <p>9 A. At some point I became the president of</p> <p>10 the company.</p> <p>11 Q. Okay. And am I correct that that was</p> <p>12 roughly in the year 2000?</p> <p>13 A. No.</p> <p>14 Q. When was that?</p> <p>15 A. '96, '97, maybe '98. I'm not sure which</p> <p>16 year.</p> <p>17 Q. Okay. And you're now the -- you're now</p> <p>18 the owner of the company?</p> <p>19 A. I'm one of the owners of the company.</p> <p>20 Q. Right. It's split among you and your</p> <p>21 siblings; is that correct?</p> <p>22 A. And we have two non-family members that</p> <p>23 have minority, very small ownership.</p> <p>24 Q. And who are those folks, please?</p> <p>25 A. Loren Asche, A-S-C-H-E, and Don Herman.</p>
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<p>1 A. No.</p> <p>2 Q. What's his name, please?</p> <p>3 A. Lund, L-U-N-D.</p> <p>4 Q. Okay. You have no other -- no other</p> <p>5 siblings?</p> <p>6 A. No. You did a good job getting them all.</p> <p>7 Q. Okay. I try. Just -- are you married,</p> <p>8 Mr. Rehm?</p> <p>9 A. Yes.</p> <p>10 Q. What's your wife's name, please?</p> <p>11 A. Jaclyn, J-A-C-L-Y-N.</p> <p>12 Q. And does your wife work at the company at</p> <p>13 all?</p> <p>14 A. No.</p> <p>15 Q. Do you have any children?</p> <p>16 A. Yes.</p> <p>17 Q. What are their names?</p> <p>18 A. Oldest is Russell; our middle is Clayton,</p> <p>19 C-L-A-Y-T-O-N, and our youngest is Barrett,</p> <p>20 B-A-R-R-E-T T.</p> <p>21 Q. Just real quick, do any of them work at</p> <p>22 Daybreak Foods?</p> <p>23 A. Summer jobs.</p> <p>24 Q. But they're not full-time employees?</p> <p>25 A. No. Our oldest turns 24 middle of this</p>	<p>1 No relationship to our chief financial officer.</p> <p>2 Q. I was about to ask you that. What's the</p> <p>3 name of your chief financial officer?</p> <p>4 A. Dick Herman.</p> <p>5 Q. Okay. And just roughly, when you were</p> <p>6 the CFO of the company or the treasurer of the</p> <p>7 company, what were your general job descriptions at</p> <p>8 that time?</p> <p>9 A. Anything and everything.</p> <p>10 Q. Does that differ at all from what you do</p> <p>11 now as the president and CEO?</p> <p>12 A. The size and scope of our company was</p> <p>13 significantly smaller at that time than it is</p> <p>14 today, and so we are far more defined in our</p> <p>15 responsibilities than we were at that time.</p> <p>16 Q. What percentage of ownership of the</p> <p>17 company does Loren Asche have?</p> <p>18 A. I'm not sure. We're fine. Just keep</p> <p>19 going.</p> <p>20 Q. But I don't want to let -- if Chris has</p> <p>21 to step out --</p> <p>22 MR. ONDECK: We're going to refill with</p> <p>23 water.</p> <p>24 MR. ARANOFF: Can I continue?</p> <p>25 MR. ONDECK: Please.</p>

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<p>1 BY MR. ARANOFF:</p> <p>2 Q. I didn't hear if you answered me, so I</p> <p>3 apologize --</p> <p>4 A. I'm not sure what his ownership</p> <p>5 percentage is.</p> <p>6 Q. Let me back up. Is Loren Asche a man or</p> <p>7 a woman?</p> <p>8 A. Gentleman. I almost said that before.</p> <p>9 Q. That was a wrong assumption on my part,</p> <p>10 so I'm sorry.</p> <p>11 A. That's all right.</p> <p>12 Q. So Mr. Asche, you don't know what</p> <p>13 percentage of the company he has?</p> <p>14 A. Not specifically.</p> <p>15 Q. Can you give me an estimate?</p> <p>16 A. Loren and Don own less than five percent</p> <p>17 of the company.</p> <p>18 Q. What is Loren's -- aside from being a</p> <p>19 part owner, what are Loren's responsibilities, to</p> <p>20 the best of your knowledge?</p> <p>21 A. If it breathes, has feathers, and eats</p> <p>22 feed, he's responsible. So he's responsible for</p> <p>23 all the layers, pullets, and feed mill activities.</p> <p>24 Q. And what about Don Herman, what is his</p> <p>25 responsibility, aside from being an owner of the</p>	<p>1 Patricia Stonger was director of technical services</p> <p>2 and regulation affairs?</p> <p>3 A. I'm not sure what her specific title was.</p> <p>4 She had input in that activity in connection with</p> <p>5 the regulatory matters as it pertains to egg</p> <p>6 quality and egg production.</p> <p>7 Q. Is there somebody that works at Daybreak</p> <p>8 named Chris, I may pronounce this wrong, Roadle,</p> <p>9 Ruddle?</p> <p>10 A. Raydel (phonetic.)</p> <p>11 Q. Raydel?</p> <p>12 A. Yes.</p> <p>13 Q. And who is Chris Raydel?</p> <p>14 A. Chris Raydel is -- I'm not sure what his</p> <p>15 title is. He works under our production division</p> <p>16 with, I'm going to use the term logistics, on</p> <p>17 pullet growing with crews and moving pullets from</p> <p>18 the grow house to the layer house.</p> <p>19 Q. So is it fair to say that he is</p> <p>20 essentially a production manager at Daybreak?</p> <p>21 A. No.</p> <p>22 Q. Okay. Can you explain in laymen's terms</p> <p>23 what responsibilities Chris Raydel has?</p> <p>24 A. I thought I just did.</p> <p>25 Q. I didn't understand what you said.</p>
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<p>1 company?</p> <p>2 A. He runs one of our pullet farms in</p> <p>3 Wisconsin.</p> <p>4 Q. Okay. And Dick Herman is the current</p> <p>5 CFO; correct?</p> <p>6 A. Correct.</p> <p>7 Q. And he has no relationship, I think you</p> <p>8 testified earlier, no relationship at all to Don</p> <p>9 Herman?</p> <p>10 A. Correct.</p> <p>11 Q. Who is Patricia Stonger?</p> <p>12 A. Pat Stonger is our director of quality</p> <p>13 assurance at Daybreak Foods.</p> <p>14 Q. Patricia Stonger is a woman, I take it;</p> <p>15 correct?</p> <p>16 A. Correct.</p> <p>17 Q. Okay. And she's had that position for</p> <p>18 quite awhile?</p> <p>19 A. Yeah. I'm not sure how long Pat's been</p> <p>20 with Daybreak. More than ten years, I believe.</p> <p>21 Q. And I think I misheard you. Could you</p> <p>22 just state real quick, again, what her position at</p> <p>23 the company is now?</p> <p>24 A. Director of quality assurance.</p> <p>25 Q. Was there any point in time where</p>	<p>1 A. He is responsible for logistics as it</p> <p>2 pertains to organizing the pullet activities and</p> <p>3 moving pullets from the grow house to the layer</p> <p>4 house.</p> <p>5 Q. And that differs from what your brother</p> <p>6 who does logistics does; correct?</p> <p>7 A. My brother's logistics deals -- my</p> <p>8 brother's logistics deals strictly with our egg</p> <p>9 that we sell.</p> <p>10 Q. Okay. How many employees are there</p> <p>11 currently at Daybreak?</p> <p>12 A. Again, it's beyond the scope, is my</p> <p>13 understanding, that this process ends in 2008. But</p> <p>14 as of right now, roughly 500 people work with us at</p> <p>15 Daybreak.</p> <p>16 Q. Has that remained constant since you came</p> <p>17 to the company?</p> <p>18 A. No.</p> <p>19 Q. How has that changed over the course of</p> <p>20 time?</p> <p>21 A. Daybreak has grown significantly since I</p> <p>22 started at the company. And since we purchased my</p> <p>23 father in January 2001, we've grown over</p> <p>24 300 percent. And there -- our employment base has</p> <p>25 grown along with that.</p>

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<p>1 Q. And is there a board of directors at 2 Daybreak? 3 A. Yes. 4 Q. And can you -- how many people are on the 5 board of directors? 6 A. We're in the process of making some 7 changes to that board, but historically it was just 8 three. 9 Q. Okay. When you say historically, 10 historically, who have the three people that have 11 served on that board? 12 A. My brothers, Burton, Brent, and myself. 13 Q. Okay. And you're in the process -- you 14 said you're in the process of making a change? 15 A. Yes. 16 Q. Has that change been implemented? 17 A. We are just about done. 18 Q. Okay. And can I get a preview as to 19 who's going to serve on the board now, next? 20 A. Permanent positions on the board will be 21 the position of chief financial officer. 22 Q. That would be Dick Herman? 23 A. He sits in that position today, yes. The 24 permanent position of president, and that would be 25 me today. My brothers Tony, Burton -- I'm going to</p>	<p>1 A. Mr. Clegg does not work for the company. 2 Q. He's not an in-house lawyer? 3 A. No. 4 Q. Is he at a law firm? 5 A. Yes. 6 Q. What law firm is Mr. Clegg at? 7 A. Gray Plant Mooty, in Minneapolis. 8 Q. How long has Mr. Clegg been the general 9 counsel? 10 A. I'm not sure. 11 Q. Okay. I'm sorry. 12 A. We have been with Mr. Clegg or his 13 predecessor since the mid-'90s. 14 Q. Aside from Mr. Ondeck and his firm and 15 Mr. Clegg, does Daybreak have any other attorneys? 16 A. No. 17 THE VIDEOGRAPHER: Excuse me. When we 18 got a moment, there's a technical issue. 19 MR. ARANOFF: We'll go off the record. 20 THE VIDEOGRAPHER: Off the record at 21 10:18 p.m. 22 (Break taken.) 23 THE VIDEOGRAPHER: We're back on the 24 record at 10:28 a.m. 25 BY MR. ARANOFF:</p>
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<p>1 call him Tony. 2 Q. Call him Tony. 3 A. Thank you. Nobody calls him Burton. 4 Q. Well, I was just trying to be polite. 5 A. You don't have to worry. Burton, Tony, 6 and my brother Brent, have revolving positions on 7 the board. And we have two outside board members. 8 Q. And who are they? 9 A. We have one selected, his name is Jerry 10 Rose, and he has been selected and elected to the 11 board. And we're in the process of solidifying a 12 second outside board member. 13 Q. And where does Jerry Rose work now? 14 A. He's retired. 15 MR. ONDECK: Objection, relevance. 16 BY MR. ARANOFF: 17 Q. Okay. Does Daybreak have a general 18 counsel? 19 A. Yes. 20 Q. And who's that? 21 A. Barry Clegg. C-L egg. C-L-E-G-G. 22 Q. That's cute. 23 A. We worked hard at that one. 24 Q. Okay. And how long has Mr. Clegg been 25 with the company?</p>	<p>1 Q. Okay, Mr. Rehm. What did you do to 2 prepare for your deposition today? 3 A. Met with my counsel. 4 Q. That's Mr. Ondeck? 5 A. Yes. 6 Q. For how long, roughly? 7 A. Eight hours, maybe. 8 Q. Was anybody else present during that 9 meeting? 10 A. Elisa. 11 Q. Anybody else? 12 A. No. 13 Q. Mr. Clegg? 14 A. No. 15 Q. Mr. Greene? 16 A. No. 17 Q. Without telling me what you reviewed, did 18 you review documents in preparation for today? 19 A. We looked at a few minutes. 20 Q. Okay. Anything else? 21 A. One slide to help organize in my head the 22 timeline on our construction and expansion projects 23 to make sure that I had those clear points in time. 24 That's all. 25 Q. Okay. Does anybody at the company know</p>

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<p>1 that you're testifying today in this action?</p> <p>2 A. They know that I'm in deposition today,</p> <p>3 yes.</p> <p>4 Q. About this case?</p> <p>5 A. Yes.</p> <p>6 Q. Have you had any discussion about your</p> <p>7 testimony with anybody at the company?</p> <p>8 A. No.</p> <p>9 Q. Do you know a gentleman by the name of Ky</p> <p>10 Hendricks? Do you know who that is?</p> <p>11 A. If you refer to K-Y, Hendricks, from Rose</p> <p>12 Acres.</p> <p>13 Q. He is from Rose Acre. I actually think</p> <p>14 his name is spelled K-Y. But yes, we're talking</p> <p>15 about the same person. Do you know who that is?</p> <p>16 A. I know who that is.</p> <p>17 Q. Have you had any communication with</p> <p>18 Mr. Hendricks in the last 60 days, roughly?</p> <p>19 A. No.</p> <p>20 Q. Did you, in preparation for your</p> <p>21 testimony today, did you review a transcript of</p> <p>22 Mr. Hendrick's deposition?</p> <p>23 A. No.</p> <p>24 Q. Do you know an individual named Gene</p> <p>25 Gregory?</p>	<p>1 Mr. Pope?</p> <p>2 A. Years ago.</p> <p>3 Q. And is it fair to say that you have not</p> <p>4 reviewed a transcript of his deposition in</p> <p>5 preparation for your testimony today?</p> <p>6 A. Yes.</p> <p>7 Q. How many farms does Daybreak Foods</p> <p>8 currently operate?</p> <p>9 A. Eight inline complexes, and we have</p> <p>10 several contracted facilities.</p> <p>11 Q. So I'm going to try to make this as easy</p> <p>12 as possible on you, because I'm sure it's not that</p> <p>13 easy to remember, but fill in any gaps. You have a</p> <p>14 farm in Long Prairie, Minnesota?</p> <p>15 A. No, we have a processing plant in Long</p> <p>16 Prairie, Minnesota.</p> <p>17 Q. And what exactly do you process there?</p> <p>18 A. We bring in eggs from our contract</p> <p>19 facilities in Minnesota into our plant in Long</p> <p>20 Prairie, where they are then put onto our breaking</p> <p>21 machines for us to produce raw, unpasteurized,</p> <p>22 liquid egg.</p> <p>23 Q. You understand when I use the term</p> <p>24 "layer," you understand what a layer is?</p> <p>25 A. I know what I think a layer is, yes.</p>
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<p>1 A. Yes.</p> <p>2 Q. Who is Gene Gregory?</p> <p>3 A. He's a retired past, I believe it was</p> <p>4 president, of the United Egg Producers.</p> <p>5 Q. Have you had any communications with</p> <p>6 Mr. Gregory in the last 60 days?</p> <p>7 A. In his retired capacity, he stopped at</p> <p>8 our office and interviewed me in preparation for an</p> <p>9 article he did about our company in United Voice.</p> <p>10 Q. When was that? Do you have any idea,</p> <p>11 roughly?</p> <p>12 A. Beginning, end of June.</p> <p>13 Q. Did you discuss his deposition testimony</p> <p>14 at all with respect to this case?</p> <p>15 A. No.</p> <p>16 Q. Did you review a transcript of his</p> <p>17 deposition testimony in preparation for today's --</p> <p>18 for your testimony today?</p> <p>19 A. No.</p> <p>20 Q. Do you know an individual named Al Pope?</p> <p>21 A. Yes.</p> <p>22 Q. Who's Al Pope?</p> <p>23 A. He was, at one point, the president of</p> <p>24 United Egg Producers prior to Gene Gregory.</p> <p>25 Q. And when's the last time you spoke with</p>	<p>1 Q. What is your understanding of a layer?</p> <p>2 A. Process a laying hen. A laying hen</p> <p>3 chicken somewhere from 20 weeks to 110 weeks of</p> <p>4 age.</p> <p>5 Q. 20 weeks to 120 weeks, is that what you</p> <p>6 said?</p> <p>7 A. 110.</p> <p>8 Q. 110 weeks of age. Would you say that</p> <p>9 that is a common term within the industry and that</p> <p>10 people understand layer to mean the same as you do?</p> <p>11 MR. ONDECK: Objection.</p> <p>12 THE WITNESS: No.</p> <p>13 BY MR. ARANOFF:</p> <p>14 Q. Have you heard people talk about layers</p> <p>15 with a different definition than yours?</p> <p>16 A. They may not run layers as long as we run</p> <p>17 layers.</p> <p>18 Q. So when you say your understanding of</p> <p>19 layer, you're talking about layer as it relates to</p> <p>20 Daybreak Foods; correct?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Do you -- how many -- are there</p> <p>23 any layers at the Long Prairie, Minnesota facility?</p> <p>24 A. Long Prairie is a production -- is a</p> <p>25 processing plant. And in Minnesota, we have</p>

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<p>1 contract facilities that feeds the eggs into that</p> <p>2 plant.</p> <p>3 Q. Where are those facilities?</p> <p>4 A. They're scattered around that geographic</p> <p>5 area in Minnesota.</p> <p>6 Q. Do you have -- do those facilities have</p> <p>7 names?</p> <p>8 A. Radine -- they're basically referred to</p> <p>9 as the owner of the farm.</p> <p>10 Q. Okay. And do you have an idea just</p> <p>11 roughly how many of those you have in Long Prairie?</p> <p>12 A. We have about 1.2 million hens on</p> <p>13 contract in Minnesota.</p> <p>14 Q. And you also have a facility in Lake</p> <p>15 Mills, Wisconsin; correct?</p> <p>16 A. We have two facilities in Lake Mills,</p> <p>17 Wisconsin.</p> <p>18 Q. And what kind of production goes on in</p> <p>19 the Lake Mills facilities?</p> <p>20 A. They're both inline production of raw,</p> <p>21 unpasteurized liquid egg.</p> <p>22 Q. What do you mean when you say "inline"?</p> <p>23 A. That the plant and the hens are all on</p> <p>24 the same farm and connected with one another. And</p> <p>25 as the eggs come off the layer barn, they are</p>	<p>1 owns 51 percent.</p> <p>2 Q. And when you -- you're talking about the</p> <p>3 product that's -- that's generated at the</p> <p>4 Graettinger facility, is that the same raw,</p> <p>5 unprocessed product that we've been discussing up</p> <p>6 until now?</p> <p>7 A. The Best Egg Company produces raw,</p> <p>8 unpasteurized liquid egg, yes. And that whole</p> <p>9 process was generated as a customer solution trying</p> <p>10 to create what a customer is asking us to complete.</p> <p>11 Q. And are there layers at the Graettinger</p> <p>12 facility?</p> <p>13 A. Yes.</p> <p>14 Q. And how many layers are there?</p> <p>15 A. Approximately 1.6 million.</p> <p>16 Q. And it's located in one place, right?</p> <p>17 It's one facility?</p> <p>18 A. One facility, one farm. It's an inline</p> <p>19 complex.</p> <p>20 Q. Then you have another facility, I</p> <p>21 believe, in Oak Ridge, Iowa?</p> <p>22 A. It's in Estherville, Iowa, referred to as</p> <p>23 Oak Ridge.</p> <p>24 Q. And does Daybreak own that entire</p> <p>25 facility in totality?</p>
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<p>1 transferred directly into the processing plant.</p> <p>2 Q. How many -- how many layers are at each</p> <p>3 of the Lake Mills facilities?</p> <p>4 A. Each one has roughly 800,000 hens.</p> <p>5 Q. Then you have a facility in, I may have</p> <p>6 mispronounced this, Graettinger, Iowa?</p> <p>7 A. Graettinger.</p> <p>8 Q. Graettinger, Iowa. Okay. Excellent.</p> <p>9 And what type of production goes on in Graettinger?</p> <p>10 A. Daybreak produces eggs that we sell as</p> <p>11 the eggs transfer into the processing room.</p> <p>12 Q. Can you explain what that means, please?</p> <p>13 A. We have a joint venture, a minority</p> <p>14 business enterprise at Graettinger. The minority</p> <p>15 business enterprise, MBE, owns the processing</p> <p>16 plant. Daybreak -- Daybreak's sole activity at</p> <p>17 that facility is to produce the eggs and convey</p> <p>18 them to the processing plant, which at that point</p> <p>19 are -- those eggs are sold to the minority</p> <p>20 enterprise.</p> <p>21 Q. When you -- well, let's break that down a</p> <p>22 bit. The minority business entity, does it have a</p> <p>23 name?</p> <p>24 A. The Best Egg Company. Daybreak owns</p> <p>25 49 percent, and a gentleman named Cornell Slade</p>	<p>1 A. Yes.</p> <p>2 Q. What kind of production goes on in the</p> <p>3 Oak Ridge -- in the Estherville facility?</p> <p>4 A. It is an inline production of raw,</p> <p>5 unpasteurized egg.</p> <p>6 Q. Does it have any minority business</p> <p>7 entities that --</p> <p>8 A. No.</p> <p>9 Q. Why is that facility called Oak Ridge as</p> <p>10 opposed to simply being a different facility named</p> <p>11 Daybreak Farms -- or Daybreak Foods?</p> <p>12 A. Because it sits behind a beautiful oak</p> <p>13 ridge, and we try to be a little creative in our</p> <p>14 naming of the facilities.</p> <p>15 Q. Fair enough. You also have a facility in</p> <p>16 Illinois?</p> <p>17 A. No.</p> <p>18 Q. Do you have -- do you currently have any</p> <p>19 pullet farms? Do anything with pullets?</p> <p>20 A. We have pullet farms, yes.</p> <p>21 Q. Are there any other facilities</p> <p>22 that -- that I haven't listed that are under the</p> <p>23 auspices of Daybreak Foods?</p> <p>24 A. Yes.</p> <p>25 Q. Which are those?</p>

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<p>1 A. In Wisconsin, we have a facility referred</p> <p>2 to as LMC, the Lake Mills Complex, and Creekwood</p> <p>3 Farms.</p> <p>4 Q. And what gets produced at those farms?</p> <p>5 A. Raw, liquid, unpasteurized egg.</p> <p>6 Q. Are there layers at those facilities?</p> <p>7 A. Only in -- I don't mean to be smart, but</p> <p>8 only a layer can produce an egg. So yes, they</p> <p>9 are -- inline complexes means that there are layers</p> <p>10 and the plant are on the same farm.</p> <p>11 Q. Fair enough. And how many layers are at</p> <p>12 LMC in Creekwood?</p> <p>13 A. I believe you asked that already. But</p> <p>14 about 800,000.</p> <p>15 Q. Any other facilities you can think of</p> <p>16 that we haven't mentioned?</p> <p>17 A. Layer complexes. Under New Day Farms,</p> <p>18 which is a wholly-owned subsidiary of Daybreak</p> <p>19 Foods, we have two complexes in the state of Ohio.</p> <p>20 Q. What kind of product are produced at</p> <p>21 those complexes?</p> <p>22 A. Raw, unpasteurized, liquid egg.</p> <p>23 Q. So I'm going to assume, as we continue on</p> <p>24 with this, that the same product is produced at</p> <p>25 each of these facilities unless you tell me</p>	<p>1 A. A pullet is a young chicken that we grow</p> <p>2 to central maturity, so it's ready to start the</p> <p>3 production of eggs.</p> <p>4 Q. Do any of the facilities that we</p> <p>5 mentioned have hatcheries?</p> <p>6 A. No.</p> <p>7 Q. Do you know what a hatchery is?</p> <p>8 A. Yeah, I know what is hatchery is. No.</p> <p>9 Q. What is a hatchery, just so we're clear?</p> <p>10 A. A hatchery is where fertile eggs are</p> <p>11 taken for the incubation process in the production</p> <p>12 of day-old baby chicks.</p> <p>13 Q. And is there any transport operation at</p> <p>14 all from any of the facilities that we've</p> <p>15 mentioned? In other words --</p> <p>16 A. I don't understand.</p> <p>17 Q. -- are any -- are products out of any of</p> <p>18 the facilities we mentioned, are they transported</p> <p>19 to other places or to customers for delivery?</p> <p>20 A. Our products are trans -- our pullets are</p> <p>21 transferred to one of our own layer complexes. And</p> <p>22 then our processing plants either deliver or,</p> <p>23 depending upon the contract, the product is picked</p> <p>24 up at our door from a layer complex.</p> <p>25 Q. Okay. And is there any transport of</p>
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<p>1 otherwise. Any other facilities that you can think</p> <p>2 of?</p> <p>3 A. Those are our layer production processing</p> <p>4 facilities, yes.</p> <p>5 Q. Does Daybreak own any additional</p> <p>6 facilities for any other purposes that we haven't</p> <p>7 already discussed?</p> <p>8 A. We own some feed mill operations and</p> <p>9 pullet grain operations.</p> <p>10 Q. Okay. Where are the feed mill</p> <p>11 operations?</p> <p>12 A. Wisconsin and Iowa.</p> <p>13 Q. What kind of production is done there?</p> <p>14 A. We grind and mix our own feed.</p> <p>15 Q. Okay. I think you mentioned one other.</p> <p>16 A. And we have a -- we have two stand-alone</p> <p>17 pullet farms, one in Wisconsin, one in Iowa.</p> <p>18 Q. Where are those located?</p> <p>19 A. One's -- for ease, I'm just going to call</p> <p>20 it just outside Lake Mills, Wisconsin. The other</p> <p>21 one's located outside of Spencer, Iowa.</p> <p>22 Q. Okay. And same kind of operation goes on</p> <p>23 at each of these facilities?</p> <p>24 A. They're pullet growing operations.</p> <p>25 Q. What's a pullet?</p>	<p>1 product between the different facilities?</p> <p>2 A. As I said, from a pullet farm to a layer</p> <p>3 farm, yes.</p> <p>4 Q. What about from a raw, unpasteurized farm</p> <p>5 to another raw, unpasteurized farm?</p> <p>6 A. No.</p> <p>7 Q. Okay. Would you consider Daybreak Foods</p> <p>8 to be vertically integrated?</p> <p>9 MR. ONDECK: Objection, calls for a legal</p> <p>10 conclusion.</p> <p>11 THE WITNESS: What do you mean by</p> <p>12 "vertically integrated"?</p> <p>13 BY MR. ARANOFF:</p> <p>14 Q. Well, you can handle every aspect of the</p> <p>15 production of the product that you produce from</p> <p>16 beginning to end; is that correct?</p> <p>17 A. No.</p> <p>18 MR. ONDECK: Objection.</p> <p>19 MR. GREENE: Objection.</p> <p>20 THE WITNESS: No.</p> <p>21 BY MR. ARANOFF:</p> <p>22 Q. Okay. Why do you say no?</p> <p>23 A. We don't handle any breeder stock, have</p> <p>24 any breeder houses, and we do not own or operate</p> <p>25 any hatcheries for the production of day-old baby</p>

19 (Pages 70 to 73)



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1 chicks.

2 Q. Do you need to purchase any materials

3 from another source in order to produce your raw,

4 unpasteurized product?

5 A. That's a pretty general question, so can

6 you be more specific?

7 Q. In processing raw, unpasteurized eggs for

8 production to your customers, specifically, for

9 example, Michael Foods or Deb-El or Cargill, other

10 than the materials that you produce on your own at

11 your own facilities, do you have to buy any other

12 product and add them to the mix in order to -- in

13 order to produce your raw, unpasteurized eggs?

14 A. Any products that we would need to buy

15 are not added to our raw, unpasteurized liquid,

16 they're utilized for cleaning, sanitation, pest

17 control, things of that nature, to operate the

18 facility. But they're not -- it's not added to our

19 product in any way, shape or form. That would be

20 an adulterated product and be not fit for human

21 consumption, even if I tried to sell it to any one

22 of our customers.

23 Q. Okay. Do you have an understanding as to

24 how large Daybreak Foods is compared to other

25 companies in the United States that produce raw,

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1 unpasteurized egg?

2 MR. ONDECK: Objection, calls for

3 speculation.

4 THE WITNESS: I don't know.

5 BY MR. ARANOFF:

6 Q. Would you -- is it fair to say that

7 Daybreak Foods is one of the ten largest egg

8 producing companies in the United States?

9 A. Yes.

10 MR. GREENE: Objection.

11 BY MR. ARANOFF:

12 Q. Okay. Is it fair to say that Daybreak

13 Foods is one of the five largest egg breaking

14 companies in the United States?

15 A. I don't know that for sure, but I believe

16 it to be true.

17 Q. Okay. Who else would comprise, in your

18 mind, the ten largest egg production companies in

19 the United States?

20 MR. ONDECK: Objection.

21 MR. GREENE: Object.

22 THE WITNESS: I probably cannot tell you

23 all ten.

24 BY MR. ARANOFF:

25 Q. Can you tell me the ones that --

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1 A. I can tell you some.

2 Q. Great.

3 A. They'll get lost somewhere. I believe

4 the largest is Cal-Maine; then there's Rose Acres,

5 Moark, Sparboe. And then after that I don't know

6 who the rest of the top ten would be.

7 MR. ONDECK: I object to the answer.

8 Move to strike.

9 BY MR. ARANOFF:

10 Q. Okay. And the five largest egg breaking

11 companies, aside from yourself, who would you

12 consider the four other largest egg breaking

13 companies in the United States?

14 MR. ONDECK: Objection.

15 MR. GREENE: Objection.

16 THE WITNESS: In my opinion, I believe

17 that the people that break large quantities of egg

18 would include Michael's --

19 BY MR. ARANOFF:

20 Q. When you say Michael, you mean Michael

21 Foods?

22 A. Michael Foods.

23 Q. Right.

24 A. Sonsvagard (phonetic.) And he has a

25 number of companies, so I'm not quite sure what

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1 umbrella they all fall under. Rose Acres, I

2 believe, breaks a lot of eggs. Rembrandt breaks a

3 lot of eggs. To the best of my knowledge, those

4 are the larger egg people that break eggs.

5 Q. Okay. Does Daybreak Foods have any

6 policies in place with respect to animal welfare?

7 A. We perform a lot of customer-driven

8 specifications as it relates to the egg production

9 and processing of our company. And we have several

10 customer-driven programs that we incorporate for

11 the production of our eggs.

12 Q. When you say "customer-driven," can you

13 explain what you mean by "customer-driven," please?

14 A. At the request of our customer, they have

15 asked that we produce eggs utilizing certain

16 protocols.

17 Q. And will that -- well, withdrawn. Who at

18 Daybreak Foods is in charge of dealing with issues

19 from customers with respect to animal welfare

20 issues and inquiries?

21 A. Any number of folks.

22 Q. Would you deal with that directly?

23 A. I could be one of them, yes.

24 Q. So if a customer of Daybreak's called and

25 wanted to discuss an animal welfare issue, would it

20 (Pages 74 to 77)

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<p>1 be likely that they would ask for you?</p> <p>2 A. They may start with me.</p> <p>3 Q. And if they didn't get you for one reason</p> <p>4 or another, whom else would they -- would they talk</p> <p>5 to about animal welfare issues?</p> <p>6 A. I don't understand what you mean by if</p> <p>7 they didn't get me.</p> <p>8 Q. Well, I think you testified, correct me</p> <p>9 if I'm wrong, that you're one of the people at the</p> <p>10 company that would be prepared to discuss with a</p> <p>11 customer issues pertaining to animal welfare; is</p> <p>12 that correct?</p> <p>13 A. I don't believe that's what you asked me.</p> <p>14 I think you asked me am I the only one. And I'm</p> <p>15 one of a few people that could discuss that.</p> <p>16 Q. Okay. Who are the other people that</p> <p>17 could discuss that?</p> <p>18 A. Depending upon what level of specificity</p> <p>19 it got to, it may be Pat Stonger or Loren Asche.</p> <p>20 Q. And when you say "customer," is there any</p> <p>21 standard -- if a customer didn't call but simply</p> <p>22 made a -- made an inquiry for product from you, to</p> <p>23 buy product from you, is there any standard that</p> <p>24 you have in place with respect to animal welfare</p> <p>25 that you abide by absent a specific request from a</p>	<p>1 the hen density of that farm back up to a more</p> <p>2 reasonable level.</p> <p>3 Q. Okay. And so your testimony today is</p> <p>4 that each of your customers has a different</p> <p>5 requirement with respect to how it handles -- how</p> <p>6 it wants you to handle backfilling issues?</p> <p>7 MR. ONDECK: Objection, misstates prior</p> <p>8 testimony.</p> <p>9 THE WITNESS: That is one area where</p> <p>10 there may be differences in how that may be</p> <p>11 handled.</p> <p>12 BY MR. ARANOFF:</p> <p>13 Q. Can you give me a practical example of</p> <p>14 those kind of differences?</p> <p>15 A. One prohibits it entirely and one allows</p> <p>16 it with specific circumstances needing to be met.</p> <p>17 Q. Okay. Can you tell me, as you sit here</p> <p>18 today, who prohibits it entirely?</p> <p>19 A. I believe under the McDonald's production</p> <p>20 practices, they prohibit it entirely.</p> <p>21 Q. And can you tell me as you sit here today</p> <p>22 who permits it and in what -- at what level?</p> <p>23 A. I believe that for some of the production</p> <p>24 we produce for Cargill there is limited</p> <p>25 availability for us to do some backfilling.</p>
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<p>1 customer?</p> <p>2 MR. ONDECK: Objection, compound,</p> <p>3 complex, ambiguous.</p> <p>4 BY MR. ARANOFF:</p> <p>5 Q. You can answer.</p> <p>6 A. All of our major customers, with the</p> <p>7 exception of Deb-El, have provided us with a</p> <p>8 protocol for the humane treatment in production of</p> <p>9 eggs.</p> <p>10 Q. And is it your experience that that</p> <p>11 protocol is the same, largely, from customer to</p> <p>12 customer?</p> <p>13 A. No.</p> <p>14 Q. How do they differ generally?</p> <p>15 A. Backfilling and density.</p> <p>16 Q. When you say backfilling and density,</p> <p>17 what -- first let's start with backfilling. What</p> <p>18 is your understanding of the term backfilling?</p> <p>19 A. Well, chickens, as the human -- as well</p> <p>20 as the human population, has a natural mortality</p> <p>21 rate. And there are certain times where mortality</p> <p>22 maybe is a little higher than expectation, and we</p> <p>23 have, through timing, other flocks that would --</p> <p>24 that would normally be going to slaughter that we</p> <p>25 could bring in and add back into the cages to bring</p>	<p>1 Q. How about for Michael Foods?</p> <p>2 A. I don't know specifically what their</p> <p>3 protocol is.</p> <p>4 Q. Is there somebody at the company that</p> <p>5 would know that information?</p> <p>6 A. I could postulate an assumption what I</p> <p>7 believe it is, but I don't know with specificity.</p> <p>8 Q. Okay. Go ahead and give it a try.</p> <p>9 MR. GREENE: Objection.</p> <p>10 THE WITNESS: I believe that --</p> <p>11 MR. GREENE: I'm sorry, objection, calls</p> <p>12 for speculation.</p> <p>13 THE WITNESS: Okay. I believe that they</p> <p>14 would prefer that we not backfill.</p> <p>15 BY MR. ARANOFF:</p> <p>16 Q. Michael Foods would prefer that you not</p> <p>17 backfill?</p> <p>18 A. I believe that's a portion of their</p> <p>19 program, but I don't know for sure with</p> <p>20 specificity.</p> <p>21 Q. And just so I know, is there somebody at</p> <p>22 Daybreak that would be in a better position to</p> <p>23 answer that question definitively than you?</p> <p>24 A. Loren or Pat.</p> <p>25 Q. Okay. Let's talk about -- you mentioned</p>

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<p>1 density before; right? What is -- when you talk</p> <p>2 about density with respect to animal welfare</p> <p>3 issues, what is meant by density?</p> <p>4 A. Cage density of how many hens you may</p> <p>5 have in a specific cage.</p> <p>6 Q. And among your customers, they have</p> <p>7 differences in terms of the kind of cage density</p> <p>8 that they will allow?</p> <p>9 A. I'm not sure if I would characterize it</p> <p>10 as that they would "allow" us. I'd rather</p> <p>11 characterize it as that is what they would prefer</p> <p>12 us to utilize, otherwise they would not purchase</p> <p>13 the products that we produce from us.</p> <p>14 Q. Okay. And do you have an understanding</p> <p>15 as you sit here today about what the requirements</p> <p>16 of, for example, Deb-El would be with respect to</p> <p>17 cage density?</p> <p>18 A. Deb-El's requirement is that we produce</p> <p>19 eggs in a manner that is similar to United Egg</p> <p>20 Producer's production practices.</p> <p>21 Q. And what about -- what about Cargill?</p> <p>22 A. They have any number of production</p> <p>23 practices that they would like us to incorporate</p> <p>24 depending upon the end user of the product.</p> <p>25 Q. Can you give any examples?</p>	<p>1 question back, please? I kind of like the way I</p> <p>2 asked it.</p> <p>3 COURT REPORTER: "And do you have an</p> <p>4 understanding as you sit here today on whether or</p> <p>5 not that mirrors the UEP guidelines for cage</p> <p>6 density?"</p> <p>7 THE WITNESS: I don't believe they're the</p> <p>8 same as the United Egg Producer's program.</p> <p>9 BY MR. ARANOFF:</p> <p>10 Q. Okay. Is a Michael Foods' requirement</p> <p>11 with respect to cage density more stringent or less</p> <p>12 stringent than that of the UEP?</p> <p>13 MR. ONDECK: Objection to the form of the</p> <p>14 question.</p> <p>15 THE WITNESS: We humanely handle all of</p> <p>16 our hens at all of our locations.</p> <p>17 BY MR. ARANOFF:</p> <p>18 Q. Right. But that -- I appreciate that.</p> <p>19 And my question was a little different. My</p> <p>20 question is whether or not the Michael Foods'</p> <p>21 requirement for cage density, in order to buy your</p> <p>22 product, is more stringent or less stringent than</p> <p>23 the UEP guideline for cage density.</p> <p>24 MR. ONDECK: Objection, ambiguous to the</p> <p>25 form of the question.</p>
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<p>1 A. McDonald's, Burger King.</p> <p>2 Q. And what are those specifically?</p> <p>3 A. Those are specific programs that they</p> <p>4 asked us to utilize in the production of eggs</p> <p>5 for -- for -- for those -- for Cargill to utilize</p> <p>6 in the production of their products for that</p> <p>7 specific customer.</p> <p>8 Q. And what about Michael Foods?</p> <p>9 A. What -- I'm --</p> <p>10 Q. In terms of cage density, have they</p> <p>11 communicated to you any requirements that they are</p> <p>12 asking you to adhere to in order to buy your</p> <p>13 product?</p> <p>14 A. Outside the scope of this litigation,</p> <p>15 yes. Subsequent to -- after 2008.</p> <p>16 Q. And what are those requirements?</p> <p>17 A. They would prefer that we utilize</p> <p>18 54 square inches per hen.</p> <p>19 Q. And do you have an understanding as you</p> <p>20 sit here today on whether or not that mirrors the</p> <p>21 UEP guidelines for cage density?</p> <p>22 MR. ONDECK: Objection, assumes facts not</p> <p>23 in evidence.</p> <p>24 THE WITNESS: Ask again, please.</p> <p>25 MR. ARANOFF: Could you read that</p>	<p>1 THE WITNESS: More stringent than -- I</p> <p>2 don't understand the question. We treat all of our</p> <p>3 hens in a humane manner in the process of producing</p> <p>4 eggs.</p> <p>5 BY MR. ARANOFF:</p> <p>6 Q. Does the UEP -- when I say UEP, you</p> <p>7 understand what I mean?</p> <p>8 A. United Egg Producers.</p> <p>9 Q. Right. So we understand that. Okay.</p> <p>10 Does the UEP -- and we'll get into the UEP</p> <p>11 shortly -- but does the UEP have guidelines with</p> <p>12 respect of issues pertaining to cage density?</p> <p>13 A. The United Egg Producer's animal welfare</p> <p>14 program has a holistic full program for the -- for</p> <p>15 their desired production practices.</p> <p>16 Q. Okay. And part of that is a guideline</p> <p>17 for its members -- well, withdrawn. Is it correct</p> <p>18 that there is a guideline for its members to</p> <p>19 utilize in terms of cage density for its birds?</p> <p>20 MR. DAVIS: This is Evan Davis. I</p> <p>21 object, lacks foundation.</p> <p>22 BY MR. ARANOFF:</p> <p>23 Q. You can answer.</p> <p>24 A. I need you to repeat the question.</p> <p>25 MR. ARANOFF: Can I have the question</p>

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<p>1 back, please?</p> <p>2 COURT REPORTER: "Is it correct that</p> <p>3 there is a guideline for its members to utilize in</p> <p>4 terms of cage density for its birds?"</p> <p>5 THE WITNESS: No.</p> <p>6 BY MR. ARANOFF:</p> <p>7 Q. Okay. Who's in charge of, at Daybreak,</p> <p>8 at the Daybreak facility, for implementing the cage</p> <p>9 space procedures?</p> <p>10 MR. ONDECK: Objection, assumes a fact</p> <p>11 not in evidence.</p> <p>12 THE WITNESS: I don't understand.</p> <p>13 BY MR. ARANOFF:</p> <p>14 Q. Is there someone at Daybreak Foods that</p> <p>15 monitors the cage density requirements?</p> <p>16 A. There are several people within the</p> <p>17 organization.</p> <p>18 Q. And who is that?</p> <p>19 A. Every general manager at every one of our</p> <p>20 complexes is responsible for monitoring, along with</p> <p>21 their production managers and supervisors, to make</p> <p>22 sure that we are maintaining the proper density for</p> <p>23 our customers that receive our raw, liquid,</p> <p>24 unpasteurized product from that location.</p> <p>25 Q. Do you know -- are you familiar with the</p>	<p>1 policies or procedures in place at Daybreak Foods</p> <p>2 with respect to antitrust compliance policies? In</p> <p>3 other words, has your -- have your current 500</p> <p>4 employees been trained in what they can and cannot</p> <p>5 do with respect to the laws of the United States</p> <p>6 with respect to antitrust issues?</p> <p>7 MR. ONDECK: Objection, confusing,</p> <p>8 ambiguous.</p> <p>9 THE WITNESS: No.</p> <p>10 BY MR. ARANOFF:</p> <p>11 Q. Has there ever been anyone that has</p> <p>12 handed out a manual or handbook in which the</p> <p>13 company's policies and procedures on antitrust have</p> <p>14 been addressed?</p> <p>15 MR. ONDECK: Objection, asked and</p> <p>16 answered.</p> <p>17 THE WITNESS: No.</p> <p>18 BY MR. ARANOFF:</p> <p>19 Q. Has there ever been a point in time where</p> <p>20 you personally have had a question in which you</p> <p>21 thought that -- withdrawn.</p> <p>22 Has there ever been a time where an</p> <p>23 issue has come up that you thought has raised some</p> <p>24 antitrust implications for you or for the company?</p> <p>25 MR. ONDECK: Objection, vague, ambiguous.</p>
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<p>1 term "flock size management"?</p> <p>2 A. Flux or flock?</p> <p>3 Q. Flock.</p> <p>4 A. Size management?</p> <p>5 Q. Yeah.</p> <p>6 A. No.</p> <p>7 Q. Never heard that term before?</p> <p>8 A. No.</p> <p>9 Q. Is there someone at Daybreak that manages</p> <p>10 and maintains the various flock sizes at the</p> <p>11 various facilities in which there are birds?</p> <p>12 A. I don't know what you mean by "managing</p> <p>13 flock size." I don't know what that means.</p> <p>14 Q. Okay. Have you heard of the term "chick</p> <p>15 hatch reduction"?</p> <p>16 A. Yes.</p> <p>17 Q. What is your understanding of the chick</p> <p>18 hatch reduction?</p> <p>19 A. Buy fewer day-old baby chicks.</p> <p>20 Q. Have you heard the term "molting"?</p> <p>21 A. Yes.</p> <p>22 Q. What does molting mean?</p> <p>23 A. Providing a rest period and rejuvenation</p> <p>24 period for a laying hen.</p> <p>25 Q. Have you -- withdrawn. Are there</p>	<p>1 THE WITNESS: No.</p> <p>2 BY MR. ARANOFF:</p> <p>3 Q. Have you ever -- withdrawn. I think we</p> <p>4 started talking about, a few moments ago, the UEP,</p> <p>5 do you recall that?</p> <p>6 A. Yes.</p> <p>7 Q. And I think we agreed that UEP stands for</p> <p>8 United Egg Producers; is that correct?</p> <p>9 A. Correct.</p> <p>10 Q. Aside from the UEP, do you know whether</p> <p>11 Daybreak Foods is a member of any egg marketing</p> <p>12 cooperatives?</p> <p>13 A. We are not.</p> <p>14 Q. Aside from -- besides the UEP, do you</p> <p>15 know whether Daybreak Foods is a member of any</p> <p>16 bargaining cooperatives?</p> <p>17 A. We are not.</p> <p>18 Q. Do you have an understanding as to when</p> <p>19 Daybreak joined the UEP?</p> <p>20 MR. ONDECK: Objection. I'm going to</p> <p>21 object to the previous characterization of UEP.</p> <p>22 MR. ARANOFF: I'm sorry, what</p> <p>23 characterization is that?</p> <p>24 MR. ONDECK: Egg bargaining, egg</p> <p>25 marketing.</p>

23 (Pages 86 to 89)

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<p>1 BY MR. ARANOFF:</p> <p>2 Q. Okay. You can answer. I think my</p> <p>3 question was when did Daybreak join the UEP?</p> <p>4 A. I don't know.</p> <p>5 Q. Do you have any understanding today as to</p> <p>6 whose decision it was to join the UEP?</p> <p>7 A. Yes.</p> <p>8 Q. And whose decision was that?</p> <p>9 A. Mine.</p> <p>10 Q. So is it fair then to say that Daybreak</p> <p>11 did not -- was not a member of the UEP until you</p> <p>12 joined the company, which I believe was, we said</p> <p>13 earlier, was in 1991?</p> <p>14 A. 1991-ish. No, it would not be a correct</p> <p>15 statement.</p> <p>16 Q. Okay. So how is that incorrect?</p> <p>17 A. I believe that for quite awhile there</p> <p>18 were a number of years my father would become part</p> <p>19 of the United Egg Producers and -- big umbrella,</p> <p>20 because at times there were Midwest United Egg</p> <p>21 Producers that eventually got consolidated into the</p> <p>22 United Egg Producers. There were times that he</p> <p>23 would be a member for a year or two and then drop</p> <p>24 out.</p> <p>25 Q. Is your -- and I try to be sensitive. Is</p>	<p>1 THE WITNESS: No.</p> <p>2 MR. ONDECK: Please let me object.</p> <p>3 THE WITNESS: Sorry.</p> <p>4 BY MR. ARANOFF:</p> <p>5 Q. Can you give me a sense, to the best of</p> <p>6 your ability, as to the years in which they were</p> <p>7 not members of the UEP?</p> <p>8 A. Cannot.</p> <p>9 Q. And I assume your father would be a</p> <p>10 better question to ask that to?</p> <p>11 A. No.</p> <p>12 Q. Who would be then?</p> <p>13 A. Nobody. I have no recollection of what</p> <p>14 specific years we were and what specific years we</p> <p>15 weren't, sir.</p> <p>16 Q. Do you have an understanding as you sit</p> <p>17 here today why your father initially joined the</p> <p>18 UEP?</p> <p>19 A. No.</p> <p>20 Q. Do you have an understanding -- well,</p> <p>21 withdrawn. Have you been a member of the UEP</p> <p>22 continuously since you've been at the company?</p> <p>23 A. No.</p> <p>24 Q. Do you have an understanding as to</p> <p>25 when -- I guess you rejoined the UEP at various</p>
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<p>1 your father still living?</p> <p>2 A. Yes.</p> <p>3 Q. And is he retired now?</p> <p>4 A. He's fully retired, yes.</p> <p>5 Q. He have anything to do with Daybreak?</p> <p>6 A. Nothing at all.</p> <p>7 Q. Where does your father currently reside?</p> <p>8 A. Resides in Florida.</p> <p>9 Q. Is he in reasonably good health?</p> <p>10 A. Yeah, I think so.</p> <p>11 Q. Good. I'm glad to hear it.</p> <p>12 A. Thank you.</p> <p>13 Q. So going back -- and I don't have it in</p> <p>14 front of me -- so essentially it was your father's</p> <p>15 idea initially to join the UEP?</p> <p>16 A. When he was the president of the company,</p> <p>17 I assume that he was the person that decided that</p> <p>18 he would join or drop out.</p> <p>19 Q. Have you been or -- withdrawn. Has</p> <p>20 Daybreak been a member of the UEP continuously</p> <p>21 since your father first decided to join in whatever</p> <p>22 year that was?</p> <p>23 A. No.</p> <p>24 MR. ONDECK: Objection, asked and</p> <p>25 answered.</p>	<p>1 times. Do you know when that was?</p> <p>2 A. We probably joined in the mid-'90s and</p> <p>3 have been a member since that time.</p> <p>4 Q. And have or have not?</p> <p>5 A. Have been a member since that time.</p> <p>6 Q. So roughly since 1995 Daybreak's --</p> <p>7 A. Somewhere in that --</p> <p>8 Q. In that area?</p> <p>9 A. You can call it '95, but I don't know</p> <p>10 what year.</p> <p>11 Q. If I said '95, you wouldn't argue with</p> <p>12 me, right?</p> <p>13 A. Somewhere in that timeframe.</p> <p>14 Q. Okay. Throughout your -- and when I say</p> <p>15 "your," I mean Daybreak Foods' tenure as a member</p> <p>16 of the UEP, on what committees has Daybreak served?</p> <p>17 MR. ONDECK: Objection, assumes a fact</p> <p>18 not in evidence.</p> <p>19 BY MR. ARANOFF:</p> <p>20 Q. Well, okay. Has Daybreak served on any</p> <p>21 committees in the UEP?</p> <p>22 A. Members of our organization have served</p> <p>23 on different committees within United Egg</p> <p>24 Producers.</p> <p>25 Q. When you say "members of our</p>

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<p>1 organization," you mean employees of --</p> <p>2 A. That would -- yes.</p> <p>3 Q. Okay. What committees within the UEP</p> <p>4 have those members served on?</p> <p>5 A. Environmental, government relations, food</p> <p>6 safety, egg products price discovery. Those are</p> <p>7 the ones that I can recall.</p> <p>8 Q. How about animal welfare committee?</p> <p>9 A. No.</p> <p>10 Q. How about the scientific advisory</p> <p>11 committee?</p> <p>12 A. No. Not as -- the scientific advisory</p> <p>13 committee were made up of members of the academic</p> <p>14 community.</p> <p>15 Q. Okay. Do you have an understanding as to</p> <p>16 who from Daybreak served on the environmental</p> <p>17 committee?</p> <p>18 A. Loren Asche.</p> <p>19 Q. Anyone else?</p> <p>20 A. They might have had me on there, but I</p> <p>21 don't know that I ever participated.</p> <p>22 Q. Okay. What about the government</p> <p>23 relations committee?</p> <p>24 A. Myself; I believe Pat Stonger as well.</p> <p>25 Q. What about the food safety committee?</p>	<p>1 on -- as a member of the board of directors of the</p> <p>2 UEP?</p> <p>3 A. No.</p> <p>4 Q. At any point in time when you were a</p> <p>5 member at the UEP, did anyone give the members any</p> <p>6 training on what you were or were not allowed to</p> <p>7 discuss with competitors with respect to eggs?</p> <p>8 MR. ONDECK: Objection, calls for a legal</p> <p>9 conclusion, confusing.</p> <p>10 THE WITNESS: It was -- the United Egg</p> <p>11 Producers held itself out as a Capper-Volstead</p> <p>12 Cooperative.</p> <p>13 BY MR. ARANOFF:</p> <p>14 Q. As you sit here today, do you have an</p> <p>15 understanding about what the purpose is of the UEP?</p> <p>16 MR. DAVIS: This is Evan Davis. I'll</p> <p>17 object to the lack of foundation.</p> <p>18 BY MR. ARANOFF:</p> <p>19 Q. You can answer.</p> <p>20 A. Okay. Generally, it is -- it allows for</p> <p>21 egg production companies to gather and discuss</p> <p>22 collaboratively the different issues that face us</p> <p>23 as production companies.</p> <p>24 Q. Do you have an understanding of whether</p> <p>25 the UEP has ever promoted any efforts among its</p>
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<p>1 A. Pat Stonger.</p> <p>2 Q. And what about the egg product price</p> <p>3 discovery committee?</p> <p>4 A. Myself.</p> <p>5 Q. Anybody else serve on any of these</p> <p>6 committees that you haven't named thus far?</p> <p>7 A. I don't believe so.</p> <p>8 Q. Does the UEP have a board of directors?</p> <p>9 A. Yes.</p> <p>10 Q. Have you ever served on the UEP board of</p> <p>11 directors?</p> <p>12 A. Yes.</p> <p>13 Q. When?</p> <p>14 A. Since 2003.</p> <p>15 Q. How are the board of directors of the UEP</p> <p>16 selected?</p> <p>17 A. There are nominations made by members of</p> <p>18 the United Egg Producers, and then with a slate of</p> <p>19 nominated candidates, the members elect specific</p> <p>20 members of -- board members by region of the United</p> <p>21 States.</p> <p>22 Q. Have you been on the board of directors</p> <p>23 of the UEP continuously since 2003?</p> <p>24 A. Yes.</p> <p>25 Q. Has anybody else from Daybreak served</p>	<p>1 members to manage the supply of egg or egg</p> <p>2 products?</p> <p>3 A. As a Capper-Volstead Cooperative, that</p> <p>4 was one of the things that was discussed.</p> <p>5 Q. When you say -- you say as a</p> <p>6 Capper-Volstead Cooperative. Have you or anyone at</p> <p>7 Daybreak ever made any independent inquiry to</p> <p>8 anyone with respect to the validity of the</p> <p>9 Capper-Volstead denomination?</p> <p>10 A. No. However, while attending meetings of</p> <p>11 the UEP, if I can use --</p> <p>12 MR. DAVIS: Excuse me one second. This</p> <p>13 is Evan Davis. I just want to say that UEP asserts</p> <p>14 the attorney/client privilege over any advice that</p> <p>15 flowed from counsel to UEP to its members,</p> <p>16 including Daybreak or Mr. Rehm.</p> <p>17 MR. ONDECK: And I object and I instruct</p> <p>18 you not to answer as to the substance of any</p> <p>19 advice, but you can answer as to whether people</p> <p>20 were present or advice was given. But I instruct</p> <p>21 you not to answer as to the substance of any</p> <p>22 advice.</p> <p>23 MR. ARANOFF: I didn't ask for the</p> <p>24 substance of any advice. Let's start with that.</p> <p>25 And if I could just have the question back. I just</p>

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<p>1 asked if any inquiry was made. So it's a yes or no</p> <p>2 question.</p> <p>3 COURT REPORTER: "Have you or anyone at</p> <p>4 Daybreak ever made any independent inquiry to</p> <p>5 anyone with respect to the validity of the</p> <p>6 Capper-Volstead denomination?"</p> <p>7 MR. ONDECK: Same objection. You can</p> <p>8 answer subject to my objection.</p> <p>9 THE WITNESS: As it pertains to United</p> <p>10 Egg Producers, I assume is what you're referring</p> <p>11 to?</p> <p>12 BY MR. ARANOFF:</p> <p>13 Q. Yes.</p> <p>14 A. Didn't feel a need to, because while</p> <p>15 attending several meetings, where we discussed a</p> <p>16 multitude of issues, our legal -- the United Egg</p> <p>17 Producer's legal counsel was present.</p> <p>18 Q. But I'm not asking you with respect to</p> <p>19 the -- what the UEP thought, I'm asking you with</p> <p>20 respect to what you thought.</p> <p>21 A. Because of that, I had reliance that we</p> <p>22 were a Capper-Volstead Cooperative. And in</p> <p>23 addition to that, the United Egg Producers asked us</p> <p>24 to sign specific forms to delineate to make sure</p> <p>25 that we were farmers and qualified for</p>	<p>1 MR. ONDECK: Objection, calls for a legal</p> <p>2 conclusion.</p> <p>3 THE WITNESS: I believe I said they were</p> <p>4 attorneys for United Egg Producers.</p> <p>5 BY MR. ARANOFF:</p> <p>6 Q. But they're not Daybreak lawyers;</p> <p>7 correct?</p> <p>8 MR. ONDECK: Objection, asked and</p> <p>9 answered.</p> <p>10 THE WITNESS: I answered that already,</p> <p>11 sir. You're correct.</p> <p>12 BY MR. ARANOFF:</p> <p>13 Q. Okay.</p> <p>14 MR. ARANOFF: Will you mark this, please?</p> <p>15 (Exhibit 4 marked for identification.)</p> <p>16 MR. ONDECK: Can I note for the record</p> <p>17 that Mr. Rehm did very well on the memory test with</p> <p>18 no exhibits.</p> <p>19 MR. ARANOFF: Yes, he did. He's a very</p> <p>20 nice man.</p> <p>21 THE WITNESS: Thank you.</p> <p>22 MR. ARANOFF: I can put that on the</p> <p>23 record too.</p> <p>24 THE WITNESS: Thank you very much.</p> <p>25 BY MR. ARANOFF:</p>
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<p>1 Capper-Volstead.</p> <p>2 Q. Okay. Let me ask you this. I think you</p> <p>3 testified earlier that people -- lawyers that have</p> <p>4 represented you in the past include Mr. Ondeck,</p> <p>5 who's sitting over here now; correct?</p> <p>6 A. Yes.</p> <p>7 Q. Ms. Kantor, who's sitting here today as</p> <p>8 well?</p> <p>9 A. Yes.</p> <p>10 Q. I suppose other people at Mr. Ondeck's</p> <p>11 firm; is that correct?</p> <p>12 A. Yes.</p> <p>13 Q. And then you testified earlier that</p> <p>14 Mr. Clegg was also your -- has also been an</p> <p>15 attorney of yours; is that correct?</p> <p>16 MR. ONDECK: Objection, asked and</p> <p>17 answered, argumentative.</p> <p>18 BY MR. ARANOFF:</p> <p>19 Q. Okay. Is that correct?</p> <p>20 A. Yes.</p> <p>21 Q. When you say attorneys for the UEP, who</p> <p>22 would you be referring to specifically?</p> <p>23 A. Attorneys from Brant &amp; Isaacson.</p> <p>24 Q. Okay. Those are not your lawyers, are</p> <p>25 they?</p>	<p>1 Q. Mr. Rehm, I'm showing you what's been</p> <p>2 marked as Rehm Exhibit 4 for purposes of</p> <p>3 identification. This is a single document marked</p> <p>4 confidential, bearing the Bates range DAY0023267.</p> <p>5 Take a moment to take a look at that document, and</p> <p>6 then I'm going to ask you a question.</p> <p>7 A. Ron?</p> <p>8 Q. All set?</p> <p>9 A. Yeah.</p> <p>10 Q. Okay. Do you recognize this document,</p> <p>11 Mr. Rehm?</p> <p>12 A. No.</p> <p>13 Q. Do you have any recollection as you sit</p> <p>14 here today of whether or not you were present at</p> <p>15 the animal welfare meeting agenda on -- animal</p> <p>16 welfare meeting, sorry, on January 9, 2003?</p> <p>17 A. I'm not sure if I was present or not.</p> <p>18 Q. Okay. If you look at the document,</p> <p>19 Mr. Rehm, I want to call your attention to item</p> <p>20 Roman numeral one says, "Comments on status of UEP</p> <p>21 program and current implementation." Have I read</p> <p>22 that correctly?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. And you'll see there's a</p> <p>25 subsection A there, and subsection A is Legal and</p>

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<p>1 Antitrust Concerns. Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Do you have any idea what legal</p> <p>4 and antitrust concerns were discussed at this</p> <p>5 meeting?</p> <p>6 MR. ONDECK: Objection.</p> <p>7 MR. DAVIS: This is Evan Davis. I object</p> <p>8 to the question as asking Mr. Rehm for privileged</p> <p>9 advice.</p> <p>10 MR. ARANOFF: Okay.</p> <p>11 MR. ONDECK: All right. Let me make my</p> <p>12 objection. So my objection is -- is the document</p> <p>13 speaks for itself. Calls for speculation. And</p> <p>14 those are my objections.</p> <p>15 BY MR. ARANOFF:</p> <p>16 Q. Okay. I'm not going to waste everybody's</p> <p>17 time trying to refute objections. If you know what</p> <p>18 the legal and antitrust concerns are, your personal</p> <p>19 attorney has not instructed you not to answer, so I</p> <p>20 would ask that you answer the question.</p> <p>21 A. Do not know.</p> <p>22 Q. Okay. If you -- do you recall, Mr. Rehm,</p> <p>23 whether or not you ever had any discussion</p> <p>24 subsequent to this meeting about any legal or</p> <p>25 antitrust concerns on the status of the UEP program</p>	<p>1 you. I think your mic fell off.</p> <p>2 A. Thank you.</p> <p>3 Q. You're welcome. Was it the policy -- to</p> <p>4 the best of your knowledge, Mr. Rehm, when -- well,</p> <p>5 withdrawn. Was it standard policy for -- at UEP</p> <p>6 meetings for agendas to be circulated?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And were those agendas circulated</p> <p>9 in advance of the meeting or were they circulated</p> <p>10 at the meeting?</p> <p>11 A. Usually at the meeting.</p> <p>12 Q. And was it standard practice for there to</p> <p>13 be a moniker or legend somewhere on the agenda</p> <p>14 calling for it to be returned at the end of the</p> <p>15 meeting?</p> <p>16 A. Not that I recall.</p> <p>17 Q. Okay. Do you have an understanding as</p> <p>18 you sit here today as to why then this particular</p> <p>19 agenda was asked -- you were asked to return this</p> <p>20 at the end of the meeting?</p> <p>21 MR. ONDECK: Objection, asked and</p> <p>22 answered.</p> <p>23 MR. DAVIS: This is Evan Davis. I</p> <p>24 object, lack of foundation.</p> <p>25 MR. ONDECK: And objection, asked and</p>
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<p>1 and the current implementation of it in or about</p> <p>2 January of 2003?</p> <p>3 MR. DAVIS: This is Evan Davis. I</p> <p>4 restate my objection.</p> <p>5 THE WITNESS: No.</p> <p>6 BY MR. ARANOFF:</p> <p>7 Q. Okay. If you look at the bottom of the</p> <p>8 page -- it's actually the middle of the page, but</p> <p>9 the bottom of agenda, okay? There's an asterisk.</p> <p>10 A. Yeah.</p> <p>11 Q. And it says, "Please return your agenda</p> <p>12 at the end of the meeting." Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. I read that correctly?</p> <p>15 A. Yes.</p> <p>16 Q. Do you have any understanding as to why</p> <p>17 that moniker is there?</p> <p>18 A. Nope.</p> <p>19 MR. ONDECK: Objection, document speaks</p> <p>20 for itself. Please let me object.</p> <p>21 THE WITNESS: Sorry.</p> <p>22 MR. DAVIS: Excuse me, this is Evan</p> <p>23 Davis. I also object to a lack of foundation.</p> <p>24 BY MR. ARANOFF:</p> <p>25 Q. Okay. Mr. Rehm, I'm sorry to interrupt</p>	<p>1 answered.</p> <p>2 THE WITNESS: No.</p> <p>3 BY MR. ARANOFF:</p> <p>4 Q. But this would be something that was not</p> <p>5 commonplace --</p> <p>6 MR. ONDECK: Objection, asked and</p> <p>7 answered.</p> <p>8 BY MR. ARANOFF:</p> <p>9 Q. -- to the best of your ability -- best of</p> <p>10 your knowledge, I mean?</p> <p>11 A. To my recollection, no.</p> <p>12 Q. Okay.</p> <p>13 A. Are we done with this?</p> <p>14 Q. Yes. Thank you.</p> <p>15 (Exhibit 5 marked for identification.)</p> <p>16 BY MR. ARANOFF:</p> <p>17 Q. Okay. Mr. Rehm, I've handed you what's</p> <p>18 been marked as Rehm 5 for purposes of</p> <p>19 identification. It is a document, multi-page</p> <p>20 document, bearing Bates numbers DAY0016876, and</p> <p>21 goes through DAY0016886. It is a United Voices, I</p> <p>22 guess, newsletter, for lack of a better word, with</p> <p>23 Gene Gregory as the editor, dated April 26, 2006.</p> <p>24 I'd ask you to take a look at it and then look up</p> <p>25 when you're done. It's a large document.</p>

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<p>1 Just for the preservation of some</p> <p>2 time, I will tell you that I plan to just ask you a</p> <p>3 couple of questions with respect to the second</p> <p>4 paragraph on the first page. All set?</p> <p>5 A. Yes.</p> <p>6 Q. You've had an --</p> <p>7 A. As it pertains to --</p> <p>8 Q. Right. I don't want to shortchange you.</p> <p>9 If you want to look at any more of the document,</p> <p>10 you can. But the pertinent part -- if you need to</p> <p>11 look at something else, you can let me know.</p> <p>12 A. If the questions are in reference to page</p> <p>13 one, please proceed.</p> <p>14 Q. Okay. Do you recognize this document?</p> <p>15 A. I recognize it as a United Voice</p> <p>16 document, yes.</p> <p>17 Q. Okay. Just to set the foundation so my</p> <p>18 colleagues don't yell and scream, let me ask this</p> <p>19 question. What is United Voices?</p> <p>20 A. It's -- I would refer to it as a</p> <p>21 newsletter produced by the United Egg Producers.</p> <p>22 Q. And are you a recipient of these United</p> <p>23 Voices newsletters?</p> <p>24 A. Yes.</p> <p>25 Q. And they come directly to you; is that</p>	<p>1 A. Yes.</p> <p>2 Q. Have I read that correctly?</p> <p>3 A. I believe so, yes.</p> <p>4 Q. Do you recall ever having received this</p> <p>5 document?</p> <p>6 A. No.</p> <p>7 Q. Do you recall this issue that's raised in</p> <p>8 the language that I just read ever come up at a UEP</p> <p>9 meeting?</p> <p>10 A. They talk -- we talk about these types of</p> <p>11 issues at variant points in times at the UEP level.</p> <p>12 Q. And do you recall -- but do you recall</p> <p>13 this particular --</p> <p>14 A. This particular, no.</p> <p>15 Q. Okay.</p> <p>16 A. We do not sell our eggs based on Urner</p> <p>17 Barry quote. We do not sell shell eggs. We do not</p> <p>18 sell breaking stock as the primary course of our</p> <p>19 business. Our business model and our pricing model</p> <p>20 is not predicated on Urner Barry, it's predicated</p> <p>21 on a base price, with adjustments based on grains</p> <p>22 from the Chicago Board of Trade. CBOT, I may refer</p> <p>23 to it as. I apologize for talking too fast.</p> <p>24 Q. No, that's fine. Have you completed your</p> <p>25 answer?</p>
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<p>1 right?</p> <p>2 A. Not necessarily.</p> <p>3 Q. Okay. Let me ask it a better way. How</p> <p>4 often are these produced, to the best of your</p> <p>5 knowledge?</p> <p>6 A. I don't --</p> <p>7 Q. Monthly?</p> <p>8 A. I don't know. I don't know if they come</p> <p>9 monthly, semimonthly.</p> <p>10 Q. Is it fair to say that you see them and</p> <p>11 review them?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Now, if you -- if you look at the</p> <p>14 first page, which is what we had -- where I said I</p> <p>15 was going to draw your attention, it says -- the</p> <p>16 topic on the first page is Size of the Layer Flock;</p> <p>17 do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. And then there's a second paragraph that</p> <p>20 says, "Can you produce and market shell eggs</p> <p>21 profitably at an Urner Barry large quote in the low</p> <p>22 \$.60 per dozen or less? Can you produce and</p> <p>23 profitably market shell eggs as breaking stock at</p> <p>24 \$.25 per dozen? If not, then reduce your supply."</p> <p>25 Do you see that?</p>	<p>1 A. I believe so.</p> <p>2 Q. Okay. So when you received this, did</p> <p>3 you -- is it fair to say that you didn't react to</p> <p>4 this at all or think --</p> <p>5 A. I -- I -- I apologize.</p> <p>6 Q. Is it fair to say that upon receiving</p> <p>7 this, you didn't react to this at all? Is that</p> <p>8 correct?</p> <p>9 MR. ONDECK: Objection, mischaracterizes</p> <p>10 prior testimony. He doesn't remember receiving it.</p> <p>11 THE WITNESS: If -- if in fact I did</p> <p>12 receive this and read this, it did not impact what</p> <p>13 we did with our production at Daybreak Foods</p> <p>14 because we are on program, and it's important for</p> <p>15 us to be consistent and predictable in our</p> <p>16 production from week to week, month to month,</p> <p>17 quarter to quarter, year to year, because we have</p> <p>18 to fill the contracts. We do not adjust predicated</p> <p>19 on the market value.</p> <p>20 BY MR. ARANOFF:</p> <p>21 Q. Do you know whether any other UEP members</p> <p>22 adopted and followed the language that's set forth</p> <p>23 in this United Voices newsletter?</p> <p>24 MR. ONDECK: Objection, lack of</p> <p>25 foundation.</p>

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<p>1 THE WITNESS: Sir --</p> <p>2 MR. ONDECK: Calls for speculation.</p> <p>3 THE WITNESS: -- I don't know what they</p> <p>4 do.</p> <p>5 BY MR. ARANOFF:</p> <p>6 Q. Well, you may or may not. The question</p> <p>7 is, have you had any conversations with any of the</p> <p>8 other UEP members in which this topic was</p> <p>9 addressed?</p> <p>10 A. I don't know whether they implemented it</p> <p>11 or not.</p> <p>12 Q. Do you recall ever having a discussion</p> <p>13 along these lines with any of the other UEP</p> <p>14 members?</p> <p>15 A. Yeah, that we do not implement any of</p> <p>16 these changes because of our program basis for</p> <p>17 producing and selling eggs.</p> <p>18 Q. Okay. But -- and you've answered that,</p> <p>19 and I appreciate that. But I'm asking you whether</p> <p>20 or not any of your fellow UEP members did, to the</p> <p>21 best of your personal knowledge.</p> <p>22 MR. ONDECK: Same objection.</p> <p>23 THE WITNESS: Not -- I'm sorry. Not that</p> <p>24 I know of.</p> <p>25 BY MR. ARANOFF:</p>	<p>1 it's two documents. But I think it's -- I'm pretty</p> <p>2 sure it's one. But okay. Your observation is</p> <p>3 noted.</p> <p>4 BY MR. ARANOFF:</p> <p>5 Q. All set, Mr. Rehm?</p> <p>6 A. Sure.</p> <p>7 Q. Okay. Do you recognize this document?</p> <p>8 A. Same as the last document. It appears to</p> <p>9 be a United Voice newsletter.</p> <p>10 Q. And this would be the same kind of</p> <p>11 newsletter that you -- I believe testified that you</p> <p>12 received in the ordinary course; is that correct?</p> <p>13 MR. ONDECK: Objection.</p> <p>14 THE WITNESS: I'm not sure that's the way</p> <p>15 I categorized it.</p> <p>16 BY MR. ARANOFF:</p> <p>17 Q. Okay. You do get these, though, right,</p> <p>18 when they're sent out?</p> <p>19 A. Eventually, yes.</p> <p>20 Q. Okay. So if you take a look at the first</p> <p>21 paragraph at the bottom, it says, "The message here</p> <p>22 is to review your history of customer orders and</p> <p>23 begin to reduce your supply accordingly. Don't</p> <p>24 wait too late. Begin to reduce your supply a week</p> <p>25 or two prior to Easter." Do you recall ever being</p>
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<p>1 Q. Okay.</p> <p>2 A. Done with this one, sir?</p> <p>3 Q. Yes.</p> <p>4 THE VIDEOGRAPHER: We have about ten</p> <p>5 minutes left on this tape.</p> <p>6 MR. ARANOFF: Okay. We're going to keep</p> <p>7 plowing away. I want Bill to get home tonight.</p> <p>8 THE WITNESS: I don't have far to go.</p> <p>9 MR. ARANOFF: Both Bills.</p> <p>10 (Exhibit 6 marked for identification.)</p> <p>11 BY MR. ARANOFF:</p> <p>12 Q. Okay, Mr. Rehm, I'm showing you what's</p> <p>13 been marked as Rehm Exhibit 6 for purposes of</p> <p>14 identification. Again, it's a United Voices</p> <p>15 newsletter, Bates range DAY0016849 to DAY0016854.</p> <p>16 It's a March 16, 2006 newsletter. Take a look at</p> <p>17 it, if you wouldn't mind. But again, for purposes</p> <p>18 of trying to save some time, my questions will</p> <p>19 largely be predicated on paragraphs one, two and</p> <p>20 three of the document.</p> <p>21 MR. ONDECK: Objection, this appears to</p> <p>22 be two documents stapled together.</p> <p>23 MR. ARANOFF: I don't know if it is or it</p> <p>24 isn't, but it appears to me to be documents that</p> <p>25 were provided sequentially. If it's two documents,</p>	<p>1 in a UEP meeting in which this discussion took</p> <p>2 place?</p> <p>3 MR. ONDECK: Objection, lack of</p> <p>4 foundation. Complex question.</p> <p>5 THE WITNESS: I have been in meetings of</p> <p>6 the United Egg Producers where we have talked about</p> <p>7 flock management, supply management, because we are</p> <p>8 a Capper-Volstead Cooperative. Can I specifically</p> <p>9 tell you I was in a meeting when this specific, at</p> <p>10 this specific time, where this was discussed? I do</p> <p>11 not know.</p> <p>12 BY MR. ARANOFF:</p> <p>13 Q. Okay. Do you know whether Daybreak took</p> <p>14 any action to comply with the language that I've</p> <p>15 just read to you?</p> <p>16 A. We do not do that. We do not manage our</p> <p>17 supply predicated on the market. We have long-term</p> <p>18 contracts that require us to be consistent in our</p> <p>19 production, so that we produce the same amount of</p> <p>20 eggs week after week, month after month, quarter</p> <p>21 after quarter, year after year. So if we were to</p> <p>22 do this, we would be in trouble of not being able</p> <p>23 to meet our contractual obligations.</p> <p>24 Q. Okay. If you look at the last sentence</p> <p>25 of the third paragraph, it says, "At least one</p>

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<p>1 company dedicated to breaking is taking notice and</p> <p>2 has notified UEP that they are reducing hen numbers</p> <p>3 in all houses by ten percent from their 1.6 million</p> <p>4 layers." Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Do you have an understanding as to which</p> <p>7 company is being referenced in that -- in that</p> <p>8 language that I just read to you?</p> <p>9 A. No.</p> <p>10 Q. Is that Daybreak?</p> <p>11 A. No.</p> <p>12 Q. Okay.</p> <p>13 THE VIDEOGRAPHER: We have under five</p> <p>14 minutes.</p> <p>15 MR. ARANOFF: We might as well go off</p> <p>16 before we start another document. All right, off</p> <p>17 the record for a tape change.</p> <p>18 THE VIDEOGRAPHER: This will conclude</p> <p>19 disc one. We're off the record at 11:30 a.m.</p> <p>20 (Break taken.)</p> <p>21 THE VIDEOGRAPHER: We're back on the</p> <p>22 record, the beginning of disc two of the deposition</p> <p>23 of William Rehm. Today's date, July 10, 2013. The</p> <p>24 time is 11:37 a.m.</p> <p>25 BY MR. ARANOFF:</p>	<p>1 not you were at this meeting?</p> <p>2 A. It says that I was there. Whether I was</p> <p>3 there for the meeting in its entirety, I don't</p> <p>4 know.</p> <p>5 Q. You have no reason to doubt the fact that</p> <p>6 it lists you as a member and that you were present</p> <p>7 and attended this meeting; right?</p> <p>8 MR. ONDECK: Objection.</p> <p>9 THE WITNESS: I think I answered that.</p> <p>10 It says I was there. I probably was there, but it</p> <p>11 doesn't mean I was there for the meeting in its</p> <p>12 entirety.</p> <p>13 BY MR. ARANOFF:</p> <p>14 Q. But you were certainly there at some</p> <p>15 point of the meeting; correct?</p> <p>16 A. Correct.</p> <p>17 Q. Now, it also lists staff and guests; do</p> <p>18 you see that?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And I want to ask you whether you</p> <p>21 know -- do you know a gentleman by the name of</p> <p>22 Terry Profit?</p> <p>23 A. Yes, I do.</p> <p>24 Q. Who's Terry Profit?</p> <p>25 A. Terry Profit is a hunting buddy of mine.</p>
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<p>1 Q. All right. Welcome back. Mr. Rehm, I'm</p> <p>2 going to show you what's been marked as Rehm</p> <p>3 Exhibit 7 for purposes of identification. Ask you</p> <p>4 to take a look at it and then I will ask you some</p> <p>5 questions. Again, this document is listed as</p> <p>6 confidential. It bears Bates number UE0308772 and</p> <p>7 continues through you UE0308776.</p> <p>8 I'd ask you to take a look at it.</p> <p>9 Particular emphasis will be the members and staff</p> <p>10 and guests on the first page, as well as page</p> <p>11 number four, which covers industry economics. All</p> <p>12 set? Nope. Okay?</p> <p>13 A. I'm sorry, you referenced what page with</p> <p>14 regard to economics? Oh, industry. I apologize.</p> <p>15 Q. Page -- no, don't apologize. Page four.</p> <p>16 A. Yep, I got it.</p> <p>17 Q. All set?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. So you see that this is a UEP</p> <p>20 board of directors' set of minutes from</p> <p>21 January 14th through January 15th of 2002 in</p> <p>22 Atlanta, Georgia. Do you recognize this document?</p> <p>23 A. I recognize it as minutes of those</p> <p>24 meetings.</p> <p>25 Q. Do you have a recollection of whether or</p>	<p>1 Q. Okay. Do you have any professional</p> <p>2 relationship with Mr. Profit?</p> <p>3 A. Mr. Profit works for Cargill Kitchen</p> <p>4 Solutions.</p> <p>5 Q. Okay. Do you know whether Cargill</p> <p>6 Kitchen Solutions was a member of the UEP?</p> <p>7 A. They are not.</p> <p>8 Q. Do you know -- let me ask this. Was</p> <p>9 Mr. Profit, prior to Cargill's acquisition of</p> <p>10 Sunny Fresh, was Mr. Profit a principal or</p> <p>11 employee of Sunny Fresh?</p> <p>12 A. No.</p> <p>13 Q. Okay. Is Cargill in the business of egg</p> <p>14 production?</p> <p>15 MR. ONDECK: Objection.</p> <p>16 THE WITNESS: During the timeframe of</p> <p>17 this litigation, no.</p> <p>18 BY MR. ARANOFF:</p> <p>19 Q. Okay. Are they now?</p> <p>20 A. No.</p> <p>21 Q. Now, if you turn to page four, there's a</p> <p>22 topic called Industry Economics; correct? Do you</p> <p>23 see that?</p> <p>24 A. Yes.</p> <p>25 Q. It says, "Marketing committee chairman</p>

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<p>1 Dolph Baker presented the latest USDA statistics of</p> <p>2 hatch flock disposal and hen inventory. He pointed</p> <p>3 out that after having exported 252 loads during the</p> <p>4 period September - November, and USDA reporting</p> <p>5 only 3.8 million more hens on December 1, 2001 than</p> <p>6 on the same date of 2000, either we have a price</p> <p>7 discovery problem or a statistical problem when</p> <p>8 considering that Urner Barry's December large quote</p> <p>9 in the northeast was 27.8 cents per dozen below the</p> <p>10 same month of the previous year." Did I read that</p> <p>11 correctly?</p> <p>12 A. I believe so.</p> <p>13 Q. Okay. Next paragraph says, "Baker also</p> <p>14 announced that we have a crisis and that a crisis</p> <p>15 management plan had been communicated to the</p> <p>16 members, calling for early molt and early hen</p> <p>17 disposal. The current egg prices indicated that</p> <p>18 this plan was working." Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. Did I read that correctly?</p> <p>21 A. I believe so.</p> <p>22 Q. Okay. Do you have any recollection as</p> <p>23 you sit here today of this discussion having taken</p> <p>24 place at the UEP meeting in Atlanta, Georgia on</p> <p>25 January 14th and 15, 2002?</p>	<p>1 withdraw that. Are the UEP board of directors'</p> <p>2 minutes circulated after they're written? Did you</p> <p>3 get a copy of them in the ordinary course?</p> <p>4 A. Not until the next meeting.</p> <p>5 Q. Okay. And are you the person that</p> <p>6 attends these meetings and would receive these</p> <p>7 minutes?</p> <p>8 A. Only as the member of Daybreak that</p> <p>9 actually is on the board of directors.</p> <p>10 Q. And do you read them when you get them?</p> <p>11 A. Usually not.</p> <p>12 Q. Okay. Does anybody at the company read</p> <p>13 them?</p> <p>14 A. No.</p> <p>15 Q. Okay. If there was something in the</p> <p>16 minutes that you had a problem with, would you have</p> <p>17 voiced any opposition to it?</p> <p>18 A. I don't normally read them.</p> <p>19 Q. And nobody at the company reads them?</p> <p>20 A. They're not on the board.</p> <p>21 Q. I didn't ask you that. I said does</p> <p>22 anybody at the company monitor the minutes of the</p> <p>23 UEP meetings?</p> <p>24 A. They're not on the board, sir, so they</p> <p>25 would have no reason to read the minutes of the</p>
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<p>1 MR. ONDECK: Objection, lack of</p> <p>2 foundation. Document speaks for itself. You can</p> <p>3 answer.</p> <p>4 THE WITNESS: I've been at meetings where</p> <p>5 these types of things have been discussed. Was I</p> <p>6 at this specific meeting and in the meeting at the</p> <p>7 time this was discussed? I don't know.</p> <p>8 BY MR. ARANOFF:</p> <p>9 Q. Do you have an understanding as you sit</p> <p>10 here today as to what was meant by Mr. Baker when</p> <p>11 he said the current egg prices indicated that this</p> <p>12 plan was working?</p> <p>13 MR. ONDECK: Same objection.</p> <p>14 THE WITNESS: Don't know. We are not</p> <p>15 part of the United Egg Producers' certified</p> <p>16 program. We have never followed any of the United</p> <p>17 Egg Producers' requests for early molting, chick</p> <p>18 reduction, or flock reduction. So what do they</p> <p>19 mean by this? I don't know, because we do not sell</p> <p>20 our eggs on the open market, Urner Barry. We sell</p> <p>21 on a program basis based on the long-term</p> <p>22 contracts. So what specifically they were</p> <p>23 intending, I'm not Mr. Baker, so I don't know.</p> <p>24 BY MR. ARANOFF:</p> <p>25 Q. Okay. Well are the -- well, let me</p>	<p>1 board.</p> <p>2 Q. Do you have a file in your office</p> <p>3 someplace that keeps all of the meeting minutes</p> <p>4 from the UEP's meetings?</p> <p>5 A. No.</p> <p>6 Q. So they're -- what do you do with the</p> <p>7 meeting minutes after they're distributed to you?</p> <p>8 A. I really don't know, sir.</p> <p>9 Q. You don't know what you do with the</p> <p>10 minutes?</p> <p>11 A. No, because they're part of a large</p> <p>12 packet of material. And usually I dispose of them</p> <p>13 after the meeting.</p> <p>14 Q. Have you -- have you attended any UEP</p> <p>15 board meetings since the inception of this lawsuit?</p> <p>16 A. Yes.</p> <p>17 Q. And were there meeting minutes that were</p> <p>18 generated as a result of any of those meetings?</p> <p>19 A. Yes.</p> <p>20 Q. And you received the meeting minutes at</p> <p>21 the next -- at the next meeting in the ordinary</p> <p>22 course, as you just said?</p> <p>23 A. Yes.</p> <p>24 Q. And did you preserve those meeting</p> <p>25 minutes or did you discard those too?</p>

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<p>1 A. No, they're somewhere in my files. I</p> <p>2 don't know where.</p> <p>3 Q. But anything prior to this lawsuit you</p> <p>4 threw in the garbage?</p> <p>5 A. Yeah. I don't -- didn't hang on to them.</p> <p>6 Q. Do you know -- and just to be clear, you</p> <p>7 don't know what was meant when Mr. Baker said the</p> <p>8 current egg prices indicated that this plan was</p> <p>9 working? You don't know what plan he's referring</p> <p>10 to?</p> <p>11 A. No.</p> <p>12 Q. And just so that the record's clear, as</p> <p>13 of the date of this meeting, to the best of your</p> <p>14 knowledge, Cargill was not in the business of egg</p> <p>15 production; is that correct?</p> <p>16 A. Cargill was in egg production until 1988,</p> <p>17 when they sold their facility to Cal-Maine.</p> <p>18 Q. But they haven't been -- sorry.</p> <p>19 A. To the best of my knowledge -- to the</p> <p>20 best of my knowledge, Mr. Profitt worked for</p> <p>21 Cargill in other capacities.</p> <p>22 Q. Okay.</p> <p>23 (Exhibit 8 marked for identification.)</p> <p>24 BY MR. ARANOFF:</p> <p>25 Q. Mr. Rehm, I've put in front of you what's</p>	<p>1 A. It may have been an article in the egg</p> <p>2 industry, I'm not sure.</p> <p>3 Q. Do you know who Edward Clark is?</p> <p>4 A. No.</p> <p>5 Q. Do you ever have any recollection of</p> <p>6 having sat and done -- or spoken with Mr. Clark at</p> <p>7 all?</p> <p>8 A. I don't recall. I know I never sat down</p> <p>9 with him.</p> <p>10 Q. Is it the kind of thing you might have</p> <p>11 discussed with him over the telephone?</p> <p>12 A. It's possible. If it was him, I'm not</p> <p>13 sure.</p> <p>14 Q. Okay. Does Daybreak -- is Daybreak a</p> <p>15 member of the -- well, withdrawn. Do you know what</p> <p>16 the USEM is?</p> <p>17 A. Yes.</p> <p>18 Q. What is the USEM?</p> <p>19 A. United States Egg Marketing, I believe.</p> <p>20 We are not a member.</p> <p>21 Q. Has Daybreak Foods ever exported any of</p> <p>22 its product outside of the United States?</p> <p>23 A. Yes. We -- for a period of time we had a</p> <p>24 customer in Canada that we sold eggs from Minnesota</p> <p>25 to Canada on a regular basis.</p>
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<p>1 been marked as Rehm 8 for purposes of</p> <p>2 identification. It's a two-page document that's</p> <p>3 not Bates numbered. It is dated July -- it's</p> <p>4 updated as of July 7, 2009. It bears a date of</p> <p>5 either February 12, 2007 or December 2, 2007. It's</p> <p>6 unclear. But one way or the other.</p> <p>7 And it is an article by Edward Clark,</p> <p>8 editor, titled Industry Executives Are Optimistic</p> <p>9 This Will Be a Profitable Year Because Companies</p> <p>10 Are Streamlining Layer Numbers to Compensate For</p> <p>11 Corn Prices.</p> <p>12 I ask that you take a look at it and</p> <p>13 then I'd like to ask you some questions when you're</p> <p>14 ready. Just to try to make it a little easier --</p> <p>15 A. Go ahead.</p> <p>16 Q. -- you can take your time, obviously.</p> <p>17 I'm going to be asking you questions pertaining to</p> <p>18 the quotes that are attributable to you, in large</p> <p>19 part. All set?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. You recognize this document,</p> <p>22 Mr. Rehm?</p> <p>23 A. I don't recognize it as this document,</p> <p>24 no.</p> <p>25 Q. Okay.</p>	<p>1 Q. And that would -- again, when we talk</p> <p>2 about the egg product that -- that Daybreak sold,</p> <p>3 we're talking about raw, unpasteurized egg;</p> <p>4 correct?</p> <p>5 A. Raw, unpasteurized, liquid egg.</p> <p>6 Q. And you were not a member of the USEM; is</p> <p>7 that correct?</p> <p>8 A. That's correct.</p> <p>9 Q. And through whom did you do those</p> <p>10 experts?</p> <p>11 A. They were a direct customer of Daybreak</p> <p>12 Foods.</p> <p>13 Q. And when you say that they were a direct</p> <p>14 customer, did you transport those goods</p> <p>15 from -- those raw, unpasteurized eggs yourself, did</p> <p>16 you contract somebody else to do it, did the</p> <p>17 customer in Canada come and pick it up themselves?</p> <p>18 A. Any one of them.</p> <p>19 Q. And just so we're clear, who is this</p> <p>20 customer in Canada? Name.</p> <p>21 A. Give me a second to think of it.</p> <p>22 Q. Sure. Absolutely.</p> <p>23 A. I can't think of the name.</p> <p>24 MR. ONDECK: Can I assist? Is it</p> <p>25 Innovatech?</p>

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<p>1 THE WITNESS: Thank you. Yes.</p> <p>2 BY MR. ARANOFF:</p> <p>3 Q. Well, assist to Mr. Ondeck. Thank you.</p> <p>4 And the name again is?</p> <p>5 A. Canadian Innovatech, I believe is the</p> <p>6 name.</p> <p>7 Q. Do you know whether any other UEP members</p> <p>8 also exported to Innovatech, Canada?</p> <p>9 A. Do not.</p> <p>10 Q. You do not?</p> <p>11 A. I do not know.</p> <p>12 Q. And this was just an individual export</p> <p>13 that you did on your own?</p> <p>14 A. It was an individual transaction that we</p> <p>15 did on a regular basis.</p> <p>16 Q. I'm sorry, do you still export to</p> <p>17 Invatech, Canada?</p> <p>18 A. Innovatech.</p> <p>19 Q. Innovatech. Sorry.</p> <p>20 A. We do not.</p> <p>21 Q. From when to when were you exporting to</p> <p>22 Nova tech?</p> <p>23 A. I don't know when it started, and I'm not</p> <p>24 sure when it ended, but we sold eggs to them for</p> <p>25 quite a few years from our Minnesota operation.</p>	<p>1 Don't know -- I've never -- I don't have any</p> <p>2 personal relationship with him.</p> <p>3 Q. Do you have any professional relationship</p> <p>4 with Mr. --</p> <p>5 A. Or professional, no.</p> <p>6 Q. But you've never -- just so that the</p> <p>7 record's clear, you haven't done any exports</p> <p>8 through Mr. Fuchs?</p> <p>9 A. Correct.</p> <p>10 Q. How did you come to -- to develop a</p> <p>11 business relationship with Invatech, if I'm</p> <p>12 pronouncing that right?</p> <p>13 A. So let's be -- Innovatech.</p> <p>14 Q. Innovatech. Sorry.</p> <p>15 A. You know, I really don't know. I don't</p> <p>16 know how we developed that relationship.</p> <p>17 Q. What is the name of the person with whom</p> <p>18 you deal at Innovatech?</p> <p>19 A. They are not a customer of ours today.</p> <p>20 Q. Okay. Who was the person that you dealt</p> <p>21 with at Innovatech?</p> <p>22 A. Hugh Weeb.</p> <p>23 Q. H-U-G-H, first name; last name W-E-E-B?</p> <p>24 A. I'm not sure.</p> <p>25 Q. Is that --</p>
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<p>1 Q. But that wasn't through any kind of</p> <p>2 cooperative; correct?</p> <p>3 A. No, it was just -- they were a direct</p> <p>4 customer of ours, and they needed -- they desired</p> <p>5 raw, liquid, unpasteurized product for their</p> <p>6 further processing activities. And we sold -- sold</p> <p>7 to them over a period of time.</p> <p>8 Q. Have you ever utilized the efforts of an</p> <p>9 egg -- do you know -- withdrawn. Do you know what</p> <p>10 an egg broker is?</p> <p>11 A. Yes.</p> <p>12 Q. I couldn't hear you.</p> <p>13 A. Yes.</p> <p>14 Q. What is an egg broker?</p> <p>15 A. He is a person that helps put buyers and</p> <p>16 sellers together. A person that wants to buy or</p> <p>17 somebody wanting to sell, he helps find a home or</p> <p>18 helps find a procurement of eggs.</p> <p>19 Q. Have you ever utilized the services of an</p> <p>20 eggs broker to export eggs?</p> <p>21 A. No.</p> <p>22 Q. Do you know a gentleman by the name of, I</p> <p>23 don't know if it's pronounced Jergen or Yergen,</p> <p>24 Fuchs, F-U-C-K -- F-U-C-H-S?</p> <p>25 A. I know -- Yergen Fuchs. I know of him.</p>	<p>1 A. Sounds good to me.</p> <p>2 Q. Is that at least phonetically correct?</p> <p>3 A. Sounds good to me.</p> <p>4 Q. Okay. Just turning to the -- to the</p> <p>5 article that I put in front of you, which has been</p> <p>6 marked as exhibit -- as Rehm Exhibit 8, if you look</p> <p>7 at the second to last paragraph on the first page,</p> <p>8 there's a quote that I believe is attributed to</p> <p>9 you. There's -- there's a presentence and then a</p> <p>10 quote.</p> <p>11 The nonquoted portion says, "In late</p> <p>12 January, the Urner Barry price in the Midwest was</p> <p>13 \$1.21/dozen for shell eggs, within \$0.15 of</p> <p>14 all-time highs." The following sentence, which is</p> <p>15 a quote attributed to you, says, "I tend to think</p> <p>16 the customers will buy eggs, whether the price per</p> <p>17 dozen is \$0.70 or \$1.70." Then there's a dash, it</p> <p>18 says Bill Rehm, Daybreak Foods. Do you see that?</p> <p>19 A. Yep.</p> <p>20 Q. Did I read all that correctly?</p> <p>21 A. Pretty close.</p> <p>22 Q. What --</p> <p>23 A. It's Rehm.</p> <p>24 Q. I apologize.</p> <p>25 A. I don't mean to be picky.</p>

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<p>1 Q. No, I'm not. It's me, not you. Is that</p> <p>2 a quote that you remember giving?</p> <p>3 A. Yes.</p> <p>4 Q. And do you stand by that quote today?</p> <p>5 A. Yes. I believe that the consuming public</p> <p>6 of retail shell eggs is an -- that's an inelastic</p> <p>7 market.</p> <p>8 Q. I think you were in the middle of a</p> <p>9 sentence.</p> <p>10 A. I think I finished it.</p> <p>11 Q. Okay. It's an inelastic market. And for</p> <p>12 the record, can you explain or can you define what</p> <p>13 you mean by an inelastic market?</p> <p>14 A. That when the consumer goes to the retail</p> <p>15 grocery store to purchase eggs, I think milk falls</p> <p>16 into that category as well, for the most part</p> <p>17 they're going to buy that product whether it's</p> <p>18 \$0.70 or \$1.70 because they want that product.</p> <p>19 Q. And is that -- that's your opinion;</p> <p>20 correct?</p> <p>21 A. That's my opinion.</p> <p>22 Q. Okay. And is that opinion -- has that</p> <p>23 opinion been consistent over a period of time? In</p> <p>24 other words, your opinion about that hasn't changed</p> <p>25 at all over time, does it?</p>	<p>1 that since the demand for eggs is inelastic, as you</p> <p>2 just said, that that means that a price will only</p> <p>3 modestly change depending upon the quantity of</p> <p>4 demand or supply?</p> <p>5 MR. ONDECK: Objection. Please let me</p> <p>6 object.</p> <p>7 THE WITNESS: Thank you.</p> <p>8 MR. ONDECK: Calls for speculation,</p> <p>9 confusing, lack of foundation. You can answer.</p> <p>10 THE WITNESS: That is not what I said.</p> <p>11 BY MR. ARANOFF:</p> <p>12 Q. Okay.</p> <p>13 A. I said the retail shell egg market, I</p> <p>14 believe, is inelastic.</p> <p>15 Q. Do you believe that the liquid egg market</p> <p>16 is inelastic?</p> <p>17 A. No.</p> <p>18 Q. Why is that?</p> <p>19 A. Because in some instances, I believe that</p> <p>20 the products that are produced with our raw,</p> <p>21 liquid, unpasteurized product is an ingredient in</p> <p>22 somebody else's -- somebody else's manufacturing</p> <p>23 product, and at times may get too high in price and</p> <p>24 price itself out of consumption.</p> <p>25 Q. Would you agree with me that the quote</p>
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<p>1 A. I mean, we do not sell product into that</p> <p>2 market, but that's my opinion of the retail shell</p> <p>3 egg market.</p> <p>4 Q. Okay. And then if you'll look at the</p> <p>5 preceding paragraph, preceding sentence to your</p> <p>6 quote, it references Uner Barry; right? Do you</p> <p>7 see that?</p> <p>8 A. Yeah. In the sentence, "In late January</p> <p>9 the Uner Barry?"</p> <p>10 Q. Yes. Do you have an understanding of</p> <p>11 what Uner Barry is?</p> <p>12 A. They're a market quoter.</p> <p>13 Q. And I think you testified earlier -- and</p> <p>14 you or Mr. Ondeck will correct me if I'm wrong --</p> <p>15 but I think you testified earlier that you don't</p> <p>16 base your pricing, meaning Daybreak's pricing for</p> <p>17 product, on the basis of Uner Barry; is that</p> <p>18 correct?</p> <p>19 A. That's correct.</p> <p>20 MR. ONDECK: Objection.</p> <p>21 BY MR. ARANOFF:</p> <p>22 Q. Okay. Yours are based on long-term</p> <p>23 contracts and cost-plus contracts; correct?</p> <p>24 A. Not cost-plus. Base price contracts.</p> <p>25 Q. Base price contracts. Would you agree</p>	<p>1 attributed to you on page one doesn't -- does not</p> <p>2 make a distinction between shell eggs and liquid</p> <p>3 eggs? It simply says "will buy eggs." Do you see</p> <p>4 that?</p> <p>5 MR. ONDECK: Objection. I'm sorry for</p> <p>6 cutting you off. Objection, the document speaks</p> <p>7 for itself, mischaracterizes the document and prior</p> <p>8 testimony.</p> <p>9 BY MR. ARANOFF:</p> <p>10 Q. Okay.</p> <p>11 A. No. Because when we talk about that</p> <p>12 Uner Barry price, it is reflective of the Uner</p> <p>13 Barry shell egg market price.</p> <p>14 Q. Right. But you don't base on Uner</p> <p>15 Barry.</p> <p>16 A. No, I --</p> <p>17 Q. That's what you said before; right?</p> <p>18 A. That's right.</p> <p>19 Q. You said you don't base it on Uner</p> <p>20 Barry. So this quote appears, at least to me, to</p> <p>21 be separate from the prior sentence; right?</p> <p>22 A. Wrong.</p> <p>23 Q. Okay. You say wrong. Okay. Okay</p> <p>24 turning to the second page of the document, under</p> <p>25 Reduced Flock Size there's another quote, I believe</p>

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<p>1 it's attributable to you. "Bill Rehm, president of 2 Daybreak Foods, Lake Mills, Wisconsin, notes that 3 there has been a fairly significant reduction in 4 the nation's flock size. 286 million birds 5 projected for 2007, versus 290 million in 2006. 6 'We are profitable now, but whether the reduction 7 keeps prices higher remains to be seen', he says." 8 Do you see that quote? 9 A. Yes. 10 Q. Do you see that paragraph? 11 A. Yep. 12 Q. Have I read that correctly? 13 A. Yes. 14 Q. Is that a quote that you remember giving? 15 A. Yes. 16 Q. Can you explain what you mean -- what you 17 meant by that quote? 18 MR. ONDECK: Objection, document speaks 19 for itself. 20 MR. ARANOFF: Well, it's a quote, so he 21 can tell us what he meant. It's a quote 22 attributable to him. 23 THE WITNESS: Well, it's easy to 24 understand that the inventory dropped four million 25 hens. I know what our cost -- I know what it</p>	<p>1 day. I don't monitor it every week. I just 2 randomly keep an eye on what it is doing just to 3 have an understanding of what it is. 4 BY MR. ARANOFF: 5 Q. Why? 6 A. Why do you buy gas for your car? 7 Q. Because you need it to drive. 8 A. Because -- 9 Q. Because you need to drive your car. 10 A. Not always. 11 Q. Right? If you're not basing your pricing 12 on Urner Barry, I'm curious as to why you're 13 monitoring the Urner Barry pricing at all. 14 A. Just to keep an eye on it. To understand 15 what it is. Just to understand what it is. Like 16 watching the baseball statistics of other teams 17 that you don't follow. You just -- what's the ERA 18 of -- of that pitcher. I don't know. You follow 19 it just to keep an eye on it. 20 Q. All right. 21 A. Doesn't mean you're a huge baseball fan. 22 Q. Okay. Now, it talks in here about there 23 has been a fairly significant reduction in the 24 nation's flock size, and then it gives some numbers 25 on that. Do you see that?</p>
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<p>1 typically costs to produce a dozen eggs. I know 2 what the Urner Barry is at different points in 3 time. I know whether that means it's profitable to 4 the industry or not. And I just -- at that point 5 you understand what I'm saying. 6 I know whether the industry that is 7 -- the bulk of the industry sells their eggs 8 predicated on Urner Barry quote. And I know what 9 our -- I know what typically it costs to produce a 10 dozen eggs, I know where that quote is, I know 11 whether -- typically whether that means is it 12 profitable or not. 13 And so when the market dropped, 14 when the number of birds dropped four million hens 15 in that period of time, I knew it meant that the 16 supply for the market was going to be less than it 17 was the previous year and would continue to be 18 profitable for those that sell their eggs on the 19 market. That is not us. 20 Q. Why are you monitoring the Urner Barry 21 pricing if you don't base your pricing on Urner 22 Barry? 23 MR. ONDECK: Objection, mischaracterizes 24 prior testimony. 25 THE WITNESS: I do not monitor it every</p>	<p>1 A. Reduction in flock size, yes. 2 Q. Has Daybreak ever done anything at any of 3 its facilities to reduce its flock size? 4 A. We have eliminated contract production at 5 different times, predicated on the age of that 6 contract farm. But we have never reduced birds 7 because of market conditions. Again, I'll 8 reiterate my previous testimony. The bulk of our 9 eggs are sold on a long-term contract, so we need 10 and require consistent and predictable production 11 to meet our contracts. So no, we do not early 12 molt; no, we do not reduce our flock size; no, we 13 do not reduce our chick hatch. We need to be 14 consistent -- 15 Q. Do you do any reduction, through any of 16 the means that you've just named, for purposes of 17 animal welfare transition? In other words, to 18 comply with new animal welfare guidelines. 19 A. Would you repeat my answer? I just want 20 to make sure I remember every one of them I said. 21 Q. Well, I just need the various forms 22 that -- 23 A. Yeah. 24 Q. I think you mentioned backfilling, flock 25 reduction --</p>

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<p style="text-align: right;">Page 138</p> <p>1 A. No, I don't think I talked about</p> <p>2 backfilling. I think I talked about flock</p> <p>3 reduction, chick hatch reduction, early molting.</p> <p>4 Q. For any of those then -- I'll make it a</p> <p>5 little bit easier for you and the court reporter.</p> <p>6 For any of those, have you done any reductions or</p> <p>7 engaged in any reductions for purposes of animal</p> <p>8 welfare transitions?</p> <p>9 MR. ONDECK: Objection to the definition</p> <p>10 of "those." I don't understand what -- what -- I'm</p> <p>11 confused on the "those."</p> <p>12 THE WITNESS: If you're referring to</p> <p>13 "those" as chick hatch reduction --</p> <p>14 BY MR. ARANOFF:</p> <p>15 Q. Yes.</p> <p>16 A. Early molting --</p> <p>17 Q. Yes.</p> <p>18 A. And I don't remember the third one.</p> <p>19 MR. ARANOFF: We'll get it from the court</p> <p>20 reporter.</p> <p>21 COURT REPORTER: Flock reduction, chick</p> <p>22 hatch reduction, early molting.</p> <p>23 THE WITNESS: We, at the request of our</p> <p>24 customers, follow their egg production processing</p> <p>25 protocol. So if their protocol asks for a</p>	<p style="text-align: right;">Page 140</p> <p>1 for itself.</p> <p>2 BY MR. ARANOFF:</p> <p>3 Q. You can answer.</p> <p>4 A. As the document says, there are breakers</p> <p>5 that are not the same as Daybreak. They buy</p> <p>6 breaking stock, take it into their plant to produce</p> <p>7 raw liquid egg. We -- in those breakers, then I</p> <p>8 found it difficult to buy enough eggs to take care</p> <p>9 of their needs. We -- I assume what I mean by that</p> <p>10 is we were fielding numerous calls for raw liquid</p> <p>11 product.</p> <p>12 However, does it -- because of our</p> <p>13 relationships with our customers and being</p> <p>14 long-term and contractual, we couldn't fill it</p> <p>15 because their requirements are very specific on</p> <p>16 what we do and the quality of the product. And</p> <p>17 they're not the same type of product.</p> <p>18 Q. If you look at the next paragraph, it</p> <p>19 says, "The widening of the price differential, he</p> <p>20 says, is due to the United Egg Producers' animal</p> <p>21 welfare program that most shell egg producers</p> <p>22 participate in." Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. I read that correctly?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 139</p> <p>1 different density level, as we restock those</p> <p>2 houses, we adjust the number of hens that we buy to</p> <p>3 comply with our customer's request.</p> <p>4 BY MR. ARANOFF:</p> <p>5 Q. Okay. If you continue on in the</p> <p>6 paragraph, again, we're on page two, middle of the</p> <p>7 page -- actually, directly the middle of the page,</p> <p>8 second paragraph, under Reduced Flock Size -- you</p> <p>9 see where I'm reading? Okay.</p> <p>10 It says, "Rehm adds that there is a</p> <p>11 significant increase in demand for liquid eggs.</p> <p>12 The key reason why, he says, is the 'huge</p> <p>13 discrepancy' in prices for table eggs versus</p> <p>14 breakers. In late January, table eggs were priced</p> <p>15 at \$1.27, while eggs sold for breakers were not</p> <p>16 even half that, \$0.51. As a result, 'anyone with</p> <p>17 the ability to put eggs into a carton was doing</p> <p>18 so', he says." Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. Did I read that correctly?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Do you have an understanding as</p> <p>23 you sit here now as to why there was, at this time,</p> <p>24 a significant increase in demand for liquid eggs?</p> <p>25 MR. ONDECK: Objection, document speaks</p>	<p style="text-align: right;">Page 141</p> <p>1 Q. What did you mean when you said "the</p> <p>2 widening price differential was due to the UEP</p> <p>3 animal welfare program"?</p> <p>4 MR. ONDECK: Objection, document speaks</p> <p>5 for itself.</p> <p>6 THE WITNESS: As shell egg producers were</p> <p>7 participating in the phase-in of the program, it</p> <p>8 had an initial impact of reducing the supply while</p> <p>9 producers were trying to develop a strategy to keep</p> <p>10 their supply consistent. Then, consequently, it</p> <p>11 drove the price of shell eggs up while not having</p> <p>12 an impact on -- as much of an impact on the liquid</p> <p>13 market pricing.</p> <p>14 MR. ONDECK: Object to that answer. Move</p> <p>15 to strike.</p> <p>16 BY MR. ARANOFF:</p> <p>17 Q. Okay. Okay. Then if you look at the</p> <p>18 impact on demand, which is the last paragraph of</p> <p>19 the article -- you see where I am, Mr. Rehm?</p> <p>20 A. Uh-huh.</p> <p>21 Q. There's a quote, again attributable to</p> <p>22 you. It says, "I tend to think that consumers will</p> <p>23 buy eggs whether the price per dozen is \$0.70 or</p> <p>24 \$1.70," Rehm says. He adds that eggs are like</p> <p>25 milk, products with inelastic demand, that is,</p>

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<p>1 unrelated to price. It's different with T-bone</p> <p>2 steaks, he says. 'When consumers see high prices</p> <p>3 on T-bones, they say, 'maybe I'll do something</p> <p>4 different tonight.'" Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Did I read that correctly?</p> <p>7 A. Yes.</p> <p>8 Q. You agree with that?</p> <p>9 A. Again, for the retail shell egg market,</p> <p>10 as I stated earlier in my testimony, I believe it</p> <p>11 is an inelastic market but not a market that we are</p> <p>12 in. And I stand by that, yes.</p> <p>13 Q. But you don't -- you would agree with me,</p> <p>14 would you not, that there's no differentiation in</p> <p>15 anything that you said in this paragraph that</p> <p>16 differentiates between shell eggs and egg products</p> <p>17 or raw and unpasteurized eggs? You don't see any</p> <p>18 differentiation of that in there, do you?</p> <p>19 MR. ONDECK: Couple of objections.</p> <p>20 Complex question, mischaracterizes prior testimony</p> <p>21 THE WITNESS: I do not agree with you.</p> <p>22 BY MR. ARANOFF:</p> <p>23 Q. Okay.</p> <p>24 A. I don't agree because it says that the</p> <p>25 consumers will buy eggs. So that's talking about</p>	<p>1 A. Yes, sir.</p> <p>2 Q. Okay. All set?</p> <p>3 A. I believe so.</p> <p>4 Q. Just so that we have some context, I know</p> <p>5 we discussed this a little earlier today, so just</p> <p>6 bear with me a second. Do you recognize this</p> <p>7 document at all, Mr. Rehm?</p> <p>8 A. I don't remember the document, no, but, I</p> <p>9 mean, it speaks for itself. But do I remember</p> <p>10 receiving this document? No. But that's okay.</p> <p>11 Q. Okay. And just for purposes of context,</p> <p>12 you are familiar with Sunny Fresh; right?</p> <p>13 A. Correct.</p> <p>14 Q. Who is Sunny Fresh?</p> <p>15 A. They are a wholly-owned subsidiary of</p> <p>16 Cargill, and now referred to as Cargill Kitchen</p> <p>17 Solutions.</p> <p>18 Q. And just so that the record's clear, what</p> <p>19 is the business of Sunny Fresh? What do they do?</p> <p>20 A. Can you give me just a second?</p> <p>21 MR. ONDECK: We have a tangled mic.</p> <p>22 MR. ARANOFF: That's no problem. Take</p> <p>23 your time.</p> <p>24 THE WITNESS: Thank you, Ron. Would you</p> <p>25 repeat your question?</p>
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<p>1 the retail shell egg market. So there is a</p> <p>2 significant differentiation between what the</p> <p>3 consumer buys at the retail shell egg market and</p> <p>4 what we produce, which is unpasteurized, raw liquid</p> <p>5 egg, which further processors use to pasteurize and</p> <p>6 do their processes with.</p> <p>7 MR. ARANOFF: I am going to take a</p> <p>8 five-minute break.</p> <p>9 THE VIDEOGRAPHER: We're going off the</p> <p>10 record at 12:15 p.m.</p> <p>11 (Break taken.)</p> <p>12 THE VIDEOGRAPHER: We're back on the</p> <p>13 record. The time 12:29 p.m.</p> <p>14 (Exhibit 9 marked for identification.)</p> <p>15 BY MR. ARANOFF:</p> <p>16 Q. Okay. Mr. Rehm, I'm going to show you</p> <p>17 what has been marked as Rehm Exhibit 9 for purposes</p> <p>18 of identification. It is a letter to you from</p> <p>19 Sunny Fresh, and contains a few other pages</p> <p>20 attached to it. It is from Harry McNamee and</p> <p>21 Warren Johnson. The Bates range of the document</p> <p>22 are DAY0013631 through DAY0013636. Documents</p> <p>23 labeled highly confidential and is dated August 23,</p> <p>24 2000. I'll show it to you. Take a look at it.</p> <p>25 I'm primarily interested with the first two pages.</p>	<p>1 BY MR. ARANOFF:</p> <p>2 Q. Sure. Yeah. What kind of business, a</p> <p>3 brief description, generally, of what Sunny Fresh</p> <p>4 does. You just said that they're a wholly-owned</p> <p>5 subsidiary of Cargill. But if you could tell me</p> <p>6 what they do?</p> <p>7 A. Yeah. And now referred to as Cargill</p> <p>8 Kitchen Solutions. They were an egg further</p> <p>9 processor that -- they're an egg further processor.</p> <p>10 Q. What specifically do they do in terms of</p> <p>11 the processing?</p> <p>12 A. To the best of my knowledge, they</p> <p>13 pasteurize, cook, package.</p> <p>14 Q. Okay. And just again, so that we're</p> <p>15 clear, what is -- what's the nature of the</p> <p>16 relationship between Daybreak and Sunny Fresh,</p> <p>17 which is Cargill Kitchen?</p> <p>18 A. Daybreak is a supplier; Cargill Kitchen</p> <p>19 Solutions, Sunny Fresh foods, is one of our</p> <p>20 customers.</p> <p>21 Q. And it's one of your three main</p> <p>22 customers, I think you testified to that earlier;</p> <p>23 correct?</p> <p>24 A. Yes, yes.</p> <p>25 Q. And again, we may have touched on this a</p>

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1 bit earlier, but I'm doing this more for context.  
 2 Did Sunny Fresh and/or Cargill Kitchen have their  
 3 own animal welfare guidelines that they wanted you  
 4 to adhere to in order to sell to them?  
 5 A. At this time?  
 6 Q. Yes.  
 7 A. No.  
 8 Q. Okay. And did that -- at some point in  
 9 time did that change?  
 10 A. Yes.  
 11 Q. Do you have a recollection as to when  
 12 that was?  
 13 A. No.  
 14 Q. Is it true then that at this point in  
 15 time, today, there are various guidelines, animal  
 16 welfare guidelines, that if you want to sell to  
 17 Sunny Fresh Farms, you need to adhere to?  
 18 A. If I want to sell on a long-term basis to  
 19 Sunny Fresh Foods, Cargill Kitchen Solutions, there  
 20 are specific guidelines that you would need to  
 21 follow to sell them on a long-term basis, yes.  
 22 Q. I think I said "farms" again --  
 23 A. That's why I just --  
 24 Q. -- I meant "foods." Okay. You said that  
 25 on a long-term basis. Does that differ from if you

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1 wanted to sell to Sunny Fresh or Cargill Kitchen or  
 2 a short-term basis, they would have a different set  
 3 of guidelines?  
 4 A. On a spot basis, I believe Cargill  
 5 Kitchen Solutions goes to the market and procures  
 6 raw liquid whole egg. I don't know what those  
 7 standards would be, if they have a specific  
 8 standard.  
 9 Q. Give me a sense, if you wouldn't mind,  
 10 and if you know, as to what -- the type of volume  
 11 of business you do with Cargill Kitchen Solutions,  
 12 a/k/a Sunny Fresh Foods?  
 13 A. Today, Cargill Kitchen Solutions is  
 14 roughly 70 percent of our volume.  
 15 Q. And what is your total volume, roughly?  
 16 A. Today, 250, 270 million dozen eggs.  
 17 Those are approximations. I'm somewhat guessing  
 18 the exact number.  
 19 Q. And what percentage is Michael Foods?  
 20 A. I've not computed that in my head.  
 21 They'd be our second largest customer.  
 22 Q. And then I guess Deb-El would be your  
 23 third?  
 24 MR. ONDECK: We just note for the record  
 25 this is highly confidential information.

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1 BY MR. ARANOFF:  
 2 Q. And do you have a sense of your gross  
 3 revenues per year from sales? Do you have that  
 4 information?  
 5 A. For what year?  
 6 Q. Let's take your most recent year, 2012.  
 7 Has that been computed?  
 8 A. Our fiscal year ends September, so yes,  
 9 our September year was done. I don't know the  
 10 exact number, but I think on a consolidated basis  
 11 we're in the area of \$270 million to \$300 million  
 12 in revenue, gross revenue.  
 13 Q. And has that grown exponentially over the  
 14 years, or is that an average? Or where would 270  
 15 million to 300 million come in the history of  
 16 Daybreak and its enterprises?  
 17 MR. ONDECK: Objection, complex question.  
 18 THE WITNESS: Well, in simple terms, in  
 19 2000 we had three million; today we have  
 20 twelve-and-a-half million. The revenue needs to  
 21 grow in proportion to the eggs, the number of hens,  
 22 that we have. So we are at the highest -- higher  
 23 end of what we've ever been, yes. We just -- we  
 24 just obtained a plateau in July of '12 of adding  
 25 some birds to our flock.

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1 BY MR. ARANOFF:  
 2 Q. Okay. And was Sunny Fresh, to the best  
 3 of your knowledge, ever a member of the UEP?  
 4 A. No, they were not, and never participated  
 5 in -- in votes at the UEP.  
 6 Q. Were they ever on any committees?  
 7 A. No.  
 8 Q. What about Cargill, same answer?  
 9 A. Yes.  
 10 Q. But they attended meetings; right?  
 11 A. As participants -- I should  
 12 recharacterize that. Not as -- as observers, not  
 13 as participants, and never participated in any  
 14 votes of the UEP, as did -- as any observer never  
 15 participated in any votes at the UEP.  
 16 Q. Okay. If you take a look -- withdrawn.  
 17 Do you know whether either Sunny Fresh or Cargill  
 18 Kitchen Solutions had any interaction at all with  
 19 the UEP scientific committee?  
 20 MR. DAVIS: Object. This is Evan Davis.  
 21 Lack of foundation.  
 22 THE WITNESS: I'm not sure that they had  
 23 interaction with the entire scientific committee of  
 24 the UEP, but I believe they had interaction with  
 25 some members of that committee.

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<p>1 BY MR. ARANOFF:</p> <p>2 Q. Do you have an understanding as you sit</p> <p>3 here today as to why they would be interacting with</p> <p>4 the UEP scientific committee?</p> <p>5 MR. DAVIS: This is Evan Davis. Same</p> <p>6 objection.</p> <p>7 MR. ONDECK: Objection, assumes fact not</p> <p>8 in evidence.</p> <p>9 THE WITNESS: I think that McDonald's</p> <p>10 looked to Cargill Kitchens -- and you can refer to</p> <p>11 it as Cargill Kitchens or Sunny Fresh, it doesn't</p> <p>12 matter, they're one and the same, just name change.</p> <p>13 McDonald's looked to Cargill Kitchens as its egg</p> <p>14 expert.</p> <p>15 So as McDonald's was evaluating the</p> <p>16 process of developing its own animal welfare</p> <p>17 standards for eggs that it would buy, they sold us</p> <p>18 the assistance of Kitchen Solutions. And</p> <p>19 consequently, Kitchen Solutions interacted with</p> <p>20 some of those members of the scientific community</p> <p>21 that are on the animal welfare committee of the</p> <p>22 UEP, because they were also on the animal welfare</p> <p>23 committee -- I'm taking a little liberties calling</p> <p>24 it the animal welfare committee -- for McDonald's.</p> <p>25 BY MR. ARANOFF:</p>	<p>1 Q. Okay. And do you know what -- why they</p> <p>2 were working with them, in response to what -- what</p> <p>3 particular action or activity?</p> <p>4 A. I think they were working with the</p> <p>5 scientific -- members of the scientific committee</p> <p>6 to assist McDonald's in developing the standards</p> <p>7 that they would utilize for the production of eggs,</p> <p>8 and ultimately the liquid, raw, unpasteurized eggs</p> <p>9 that it would purchase for its utilization in its</p> <p>10 facilities.</p> <p>11 Q. Right. But do you have an understanding</p> <p>12 as to why there would have been a need to do this?</p> <p>13 MR. DAVIS: Same objection.</p> <p>14 BY MR. ARANOFF:</p> <p>15 Q. Why was there a need for McDonald's to</p> <p>16 update the industry's welfare guidelines for</p> <p>17 egg-laying hens?</p> <p>18 MR. ONDECK: Yeah, objection.</p> <p>19 MR. DAVIS: Same objection.</p> <p>20 MR. ONDECK: Objection, calls for</p> <p>21 speculation.</p> <p>22 MR. ARANOFF: Not if he knows.</p> <p>23 THE WITNESS: I don't know.</p> <p>24 BY MR. ARANOFF:</p> <p>25 Q. If you look down on the bottom of the</p>
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<p>1 Q. Okay. If you take a look at what's been</p> <p>2 marked as Rehm Exhibit 9, I believe, you'll see</p> <p>3 that this letter says, "Dear Mr. Rehm, as you may</p> <p>4 know, Sunny Fresh and the UEP's scientific</p> <p>5 committee on animal welfare have been working with</p> <p>6 McDonald's to update the industry's welfare</p> <p>7 guidelines for egg-laying hens." Do you see that?</p> <p>8 A. Yep.</p> <p>9 Q. Now, obviously this refers to Sunny</p> <p>10 Fresh. I assume, just so that we keep the record</p> <p>11 clear, that this is prior to the Cargill Kitchen's</p> <p>12 name change; correct?</p> <p>13 A. Correct.</p> <p>14 Q. Okay. But do you have an understanding</p> <p>15 as to -- now as to why Sunny Fresh was working with</p> <p>16 the UEP scientific committee and what --</p> <p>17 MR. DAVIS: Sorry.</p> <p>18 BY MR. ARANOFF:</p> <p>19 Q. Yeah. Do you have an understanding as to</p> <p>20 why they were doing that?</p> <p>21 MR. DAVIS: Objection, calls for</p> <p>22 speculation.</p> <p>23 THE WITNESS: I think that you've asked</p> <p>24 that and I've answered that.</p> <p>25 BY MR. ARANOFF:</p>	<p>1 page, it's -- or the last bullet point on the first</p> <p>2 page, it says, "If you operate a 'dedicated' egg</p> <p>3 supply facility, we need to commence discussions</p> <p>4 soon about some aspects of the new McDonald's</p> <p>5 guidelines." Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. I read that correctly?</p> <p>8 A. Yes.</p> <p>9 Q. You see that the word "dedicated" is in</p> <p>10 quotes?</p> <p>11 A. Yes.</p> <p>12 Q. Do you know why "dedicated" is in quotes?</p> <p>13 A. Because there are some facilities that</p> <p>14 the entire production from that facility goes -- is</p> <p>15 sold to Cargill, and Cargill does its process and</p> <p>16 sells that finished product to McDonald's.</p> <p>17 Q. Do you have an understanding as to why</p> <p>18 there was a need to commence discussions soon about</p> <p>19 some aspects of the new McDonald's guidelines?</p> <p>20 A. Because those hens were already in</p> <p>21 production, producing eggs for McDonald's, versus</p> <p>22 eggs that were going to be produced under in --</p> <p>23 new houses under construction.</p> <p>24 Q. Then you'll see that on page two it says</p> <p>25 "Some of the more significant" --</p>

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<p>1 A. Just a second.</p> <p>2 Q. Sure.</p> <p>3 A. I'm sorry. Go ahead.</p> <p>4 Q. No, that's okay. Let me start again. On</p> <p>5 page two it says, "Some of the more significant</p> <p>6 changes under the new guidelines have to do with</p> <p>7 minimum space requirements for the hens' access to</p> <p>8 feeders, practices utilized to induce molting, and</p> <p>9 beak trimming practices." Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. Do you have an understanding as to why</p> <p>12 these more significant changes were necessary under</p> <p>13 the new guidelines?</p> <p>14 A. Why they were necessary?</p> <p>15 Q. Yes.</p> <p>16 A. Or why they're called significant?</p> <p>17 Q. First why they were necessary, and then</p> <p>18 why they're called significant.</p> <p>19 A. I don't -- animal health and welfare</p> <p>20 encompasses a large quantity of activity. Why</p> <p>21 these are more significant than others is because</p> <p>22 there were a major shift, especially on the cage</p> <p>23 space and minimum, and access to feeders, is not a</p> <p>24 correct description of the welfare activity.</p> <p>25 But those were activities that have an</p>	<p>1 of the things written in the letter?</p> <p>2 A. We are a company that focuses on what our</p> <p>3 customers would like us to do. This is one aspect</p> <p>4 of one thing that they asked us to do. We were</p> <p>5 going to work hard, in tandem with our customers,</p> <p>6 to figure out how to get this done for the quantity</p> <p>7 of eggs that they asked us to produce.</p> <p>8 Q. Right. But you don't recall, as you sit</p> <p>9 here today, either having called up either</p> <p>10 Mr. McNamee or Mr. Johnson and saying something</p> <p>11 along the lines of your depiction of our -- of</p> <p>12 issues related to access to feeders is a</p> <p>13 mischaracterization, do you?</p> <p>14 A. No, because I knew what they were really</p> <p>15 talking about. I didn't need to nitpick the</p> <p>16 letter. They're our customer.</p> <p>17 Q. Okay. Fair enough.</p> <p>18 (Exhibit 10 marked for identification.)</p> <p>19 BY MR. ARANOFF:</p> <p>20 Q. Showing you what's been marked as Rehm</p> <p>21 Exhibit 10 for purposes of identification. This is</p> <p>22 a UEP board of directors January 25, 2005 Atlanta,</p> <p>23 Georgia meeting minutes. It's a multi-page</p> <p>24 document that's labeled confidential. And it bears</p> <p>25 Bates numbers DAY0028028 through DAY0028035. III</p>
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<p>1 impact -- the largest impact on the cost structure</p> <p>2 of an organization as you produce eggs. And I --</p> <p>3 in this letter it uses the term "access to</p> <p>4 feeders." That is really a mischaracterization of</p> <p>5 the welfare program that McDonald's is -- has</p> <p>6 requested.</p> <p>7 Q. Okay. Well --</p> <p>8 A. It makes it sound like we restrict hens</p> <p>9 from having access to feeders, and that is</p> <p>10 definitely not the case.</p> <p>11 Q. Okay. But you don't have any</p> <p>12 recollection of having received this letter from</p> <p>13 Mr. McNamee and Mr. Johnson; right?</p> <p>14 A. Well, I'm sure I received it. But do I</p> <p>15 remember receiving it? I mean, that was a long</p> <p>16 time ago, sir.</p> <p>17 Q. Right.</p> <p>18 A. I mean, that's 15 years ago.</p> <p>19 Q. Let me just finish my question. You</p> <p>20 wouldn't quibble with me if -- that you received</p> <p>21 this document; right?</p> <p>22 A. Yes, I agree.</p> <p>23 Q. And you don't have any recollection as</p> <p>24 you sit here today of having called them and having</p> <p>25 taken any umbrage or taken any exception with any</p>	<p>1 give you a minute or two to take a look at the</p> <p>2 document.</p> <p>3 The primary focus of what I'd like to</p> <p>4 ask you, Mr. Rehm, appears on pages one in the</p> <p>5 attendance list and then again on page three at the</p> <p>6 top of the page.</p> <p>7 MR. ONDECK: I object to the authenticity</p> <p>8 of this document as described. It appears to have</p> <p>9 two committee reports attached to the back. So</p> <p>10 it's more than just the minutes.</p> <p>11 MR. ARANOFF: Okay. Well, just for the</p> <p>12 purposes of clearing the record, this is a document</p> <p>13 produced by Daybreak Foods. I have no reason to</p> <p>14 believe that it wasn't produced in the ordinary</p> <p>15 course. The Bates ranges seem to be sequential.</p> <p>16 And so it perhaps is two documents, perhaps not,</p> <p>17 but the document speaks for itself.</p> <p>18 MR. ONDECK: I don't mean to interrupt.</p> <p>19 Did you want to direct attention to a particular --</p> <p>20 MR. ARANOFF: I just did.</p> <p>21 MR. ONDECK: I missed it.</p> <p>22 MR. ARANOFF: Yeah, you were probably</p> <p>23 objecting. Just having some fun with you, Chris.</p> <p>24 MR. ONDECK: Ms. Court Reporter, could</p> <p>25 you read back the part of the document that our</p>

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<p>1 attention was directed to?</p> <p>2 COURT REPORTER: "The primary focus of</p> <p>3 what I'd like to ask you, Mr. Rehm, appears on</p> <p>4 pages one in the attendance list and then again on</p> <p>5 page three at the top of the page."</p> <p>6 MR. ONDECK: Thank you.</p> <p>7 MR. ARANOFF: Did you want to try to play</p> <p>8 "gotcha?"</p> <p>9 MR. ONDECK: She did good. No, I just</p> <p>10 missed it.</p> <p>11 THE WITNESS: Okay.</p> <p>12 BY MR. ARANOFF:</p> <p>13 Q. All set? Yeah?</p> <p>14 A. Yeah.</p> <p>15 Q. Okay. So again, this is a UEP board of</p> <p>16 directors' meeting minutes from January 25, 2005 in</p> <p>17 Atlanta, Georgia. Do you recognize this?</p> <p>18 A. Yes.</p> <p>19 Q. And again, just so that we make sure the</p> <p>20 record's clear, you see that the Bates range at the</p> <p>21 bottom right-hand corner is -- is -- has the prefix</p> <p>22 DAY; right?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. First, if you take a look at the</p> <p>25 board members and staff, okay, which is the first</p>	<p>1 middle of the --</p> <p>2 A. How many lines down?</p> <p>3 MR. ONDECK: Objection, the document</p> <p>4 speaks for itself. Calls for speculation. Best</p> <p>5 evidence rule.</p> <p>6 BY MR. ARANOFF:</p> <p>7 Q. Okay. You see Terry Proffitt's name</p> <p>8 listed there?</p> <p>9 A. Not at this point, no.</p> <p>10 Q. Take a look. It's right over here.</p> <p>11 A. I see it.</p> <p>12 Q. Okay. If you look down another three</p> <p>13 lines and slightly to the right, you'll see Norm</p> <p>14 Stocker is also present?</p> <p>15 A. Yes.</p> <p>16 MR. ONDECK: Objection.</p> <p>17 BY MR. ARANOFF:</p> <p>18 Q. Or at least he's listed as present;</p> <p>19 right?</p> <p>20 A. He's listed as being there at some point</p> <p>21 during the meeting.</p> <p>22 Q. Okay. Do you know who Norm Stocker is?</p> <p>23 A. Yes.</p> <p>24 Q. Who's Norm Stocker?</p> <p>25 A. He's risk manager and procurement person</p>
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<p>1 item there, it lists you as being present --</p> <p>2 A. Yes.</p> <p>3 Q. -- right? You agree with me on that?</p> <p>4 A. I agree that I was there at some portions</p> <p>5 of the meeting, not necessarily for all of the</p> <p>6 meeting.</p> <p>7 Q. Now you're also listed, Mr. Rehm, in the</p> <p>8 members and guests, which, if you take a look, it's</p> <p>9 about -- it's the second --</p> <p>10 A. Yeah, I see that.</p> <p>11 Q. -- second paragraph on there. Do you see</p> <p>12 that?</p> <p>13 A. Yeah.</p> <p>14 Q. Do you have any understanding as to why</p> <p>15 you'd be listed as both a board member and a</p> <p>16 staff --</p> <p>17 A. A mistake.</p> <p>18 Q. It's not the policy to list like that,</p> <p>19 it's just a typographical error, to the best of</p> <p>20 your knowledge?</p> <p>21 A. I wouldn't call it a typographical error.</p> <p>22 I call it a mistake.</p> <p>23 Q. Okay, fine. If you take a look, within</p> <p>24 the member and guest section, you'll see Terry</p> <p>25 Proffitt was present. Is that accurate? About</p>	<p>1 for Cargill Kitchen Solutions.</p> <p>2 Q. And then the last person listed on the</p> <p>3 members and guests list is an abbreviation for</p> <p>4 brother, or B-R-O, dot Stan Gumula. Do you see</p> <p>5 that?</p> <p>6 A. Yeah.</p> <p>7 Q. Do you know who that is?</p> <p>8 A. Nope.</p> <p>9 Q. Okay. Okay. If you turn to page four, I</p> <p>10 believe it is, the top of the page -- is it four?</p> <p>11 Hold on one second. Maybe I miscounted. I'm</p> <p>12 sorry, it's three. Third page. Sorry.</p> <p>13 A. You asked me to look at page three</p> <p>14 before.</p> <p>15 Q. Okay. Well, then I was right then and</p> <p>16 wrong now. Sorry about that. Okay, you'll see</p> <p>17 that there are two motions at the top, okay?</p> <p>18 A. Uh-huh.</p> <p>19 Q. The first motion -- I mean the second</p> <p>20 motion says "Motion: It was moved by Mooney and</p> <p>21 seconded by Dean to recommend that the current</p> <p>22 'intentions program' for flocks to be disposed of</p> <p>23 four weeks earlier than previously scheduled and/or</p> <p>24 flock size reduction by five percent be extended</p> <p>25 through Labor Day. Carried;" right?</p>

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<p>1 A. Uh-huh.</p> <p>2 Q. Do you see that? Did I read that</p> <p>3 correctly?</p> <p>4 A. Yes.</p> <p>5 Q. Who is Mooney?</p> <p>6 A. That's the gentleman's last name who was</p> <p>7 on the board.</p> <p>8 Q. Do you know his first name?</p> <p>9 A. Wayne, I believe.</p> <p>10 Q. Do you know what company?</p> <p>11 A. If you look on the front page, you might</p> <p>12 figure that out.</p> <p>13 Q. Okay. Do you know what company</p> <p>14 Mr. Mooney's from?</p> <p>15 A. Used to be Pilgrims Pride.</p> <p>16 Q. And Dean would be Jim Dean?</p> <p>17 A. Yes.</p> <p>18 Q. Do you know what company he's from?</p> <p>19 A. No.</p> <p>20 Q. Okay. Now, at the end -- well, I'll</p> <p>21 withdraw that question. Do you have an</p> <p>22 understanding of what the purpose of this motion</p> <p>23 was?</p> <p>24 A. I think the motion speaks for itself,</p> <p>25 yeah.</p>	<p>1 Q. Okay. Now, it says after the -- after</p> <p>2 the -- after the motion it says "carried"; right?</p> <p>3 A. Yep.</p> <p>4 Q. What does it mean?</p> <p>5 A. It means that by a majority of the board,</p> <p>6 the motion passed.</p> <p>7 Q. Do you know how you voted on this</p> <p>8 particular issue?</p> <p>9 A. I don't know that I was in the room when</p> <p>10 that motion was voted on.</p> <p>11 Q. You don't know that as you sit here</p> <p>12 today?</p> <p>13 A. That's correct.</p> <p>14 Q. But you do know that at some point during</p> <p>15 this UEP board of directors' meeting you were</p> <p>16 present?</p> <p>17 A. Yes.</p> <p>18 Q. Okay.</p> <p>19 A. But again, this does not fit into the</p> <p>20 model and business plan for Daybreak Foods. So we</p> <p>21 have never done a flock reduction because of</p> <p>22 what -- or early molt because of this.</p> <p>23 Q. Now, do you know whether -- withdrawn.</p> <p>24 Is there any mechanism by which votes are tallied,</p> <p>25 you can see who voted at a particular UEP meeting</p>
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<p>1 Q. What is your understanding what the</p> <p>2 purpose of the motion was?</p> <p>3 A. That they asked the members to</p> <p>4 voluntarily reduce their flock size.</p> <p>5 Q. By five percent; right?</p> <p>6 A. Okay, sure.</p> <p>7 Q. That's what it says; right?</p> <p>8 A. That's what it says.</p> <p>9 Q. Do you have an understanding as you sit</p> <p>10 here today as to what the purpose of reducing their</p> <p>11 flock size by five percent was?</p> <p>12 A. I assume it was so that the shell egg</p> <p>13 portion of the industry could better match its</p> <p>14 supply with demand.</p> <p>15 Q. Right. Do you think -- is it your</p> <p>16 understanding that one of the purposes for this</p> <p>17 motion was to reduce supply?</p> <p>18 MR. ONDECK: Objection.</p> <p>19 MR. DAVIS: Objection, lack of</p> <p>20 foundation, speculation.</p> <p>21 MR. ONDECK: Yeah, I'm going to object,</p> <p>22 same objection, and asked and answered.</p> <p>23 THE WITNESS: Isn't that what I just</p> <p>24 said?</p> <p>25 BY MR. ARANOFF:</p>	<p>1 on a particular motion, who voted yes and who voted</p> <p>2 no?</p> <p>3 A. No.</p> <p>4 Q. Is there any mechanism at UEP meetings</p> <p>5 where dissents to motions are logged? In other</p> <p>6 words, is there anyplace where somebody that</p> <p>7 dissented to something that was agreed upon at an</p> <p>8 UEP meeting would be memorialized?</p> <p>9 A. No.</p> <p>10 Q. No, you don't know, or no, it doesn't</p> <p>11 exist?</p> <p>12 A. No, I don't believe that exists.</p> <p>13 Q. Okay. Are you -- I think we talked about</p> <p>14 it before, but my memory's not that great, so I'll</p> <p>15 ask again. Are you familiar with an entity called</p> <p>16 the Best Egg Company?</p> <p>17 A. Yes. That's the minority business</p> <p>18 enterprise that we are part owner of.</p> <p>19 Q. And are you familiar with a gentleman by</p> <p>20 the name of Bob Beavers?</p> <p>21 A. Yes.</p> <p>22 Q. And who was Bob Beavers?</p> <p>23 A. He was a prospective candidate that we</p> <p>24 looked at as a possible minority investor, majority</p> <p>25 owner in a minority business enterprise.</p>

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<p>1 Q. For what facility?</p> <p>2 A. The Best Egg Company.</p> <p>3 Q. And what was the result of that endeavor</p> <p>4 with Mr. Beavers?</p> <p>5 A. We did not go forward with the activity</p> <p>6 and chose a different investor instead.</p> <p>7 Q. Why is that?</p> <p>8 A. Didn't feel comfortable with the entire</p> <p>9 arrangement with Mr. Beavers, nor did Kitchen</p> <p>10 Solutions, so we chose not to move forward with it.</p> <p>11 (Exhibit 11 marked for identification.)</p> <p>12 BY MR. ARANOFF:</p> <p>13 Q. I show you what's been marked as Rehm</p> <p>14 Exhibit No. 11. It is a single-page document</p> <p>15 bearing the legend Highly Confidential. It is</p> <p>16 Bates stamped DAY0020542. It's a letter from Mike</p> <p>17 Luker, president of Sunny Fresh, to Mr. Bill Rehm</p> <p>18 dated November 7, 2003. I'll give you a minute to</p> <p>19 look at it and then ask you some questions.</p> <p>20 Particular emphasis, for Chris, is on the first two</p> <p>21 paragraphs. All set?</p> <p>22 A. Yeah.</p> <p>23 Q. Okay. You recognize this letter,</p> <p>24 Mr. Rehm?</p> <p>25 A. Same thing as the past. I -- you know,</p>	<p>1 the size required for the eggs requested for by</p> <p>2 Cargill for McDonald's, we were going to expand the</p> <p>3 facility. As we walked down that path to</p> <p>4 completing our relationship with Mr. Beavers, we</p> <p>5 got significantly uncomfortable with Mr. Beavers</p> <p>6 and his then-investors, and who really was bringing</p> <p>7 the money to the table, Mr. Beavers or somebody</p> <p>8 else. And we chose to mutually, Cargill and</p> <p>9 Daybreak, chose to mutually walk away from that</p> <p>10 transaction.</p> <p>11 BY MR. ARANOFF:</p> <p>12 Q. Do you know whether Mr. Beavers ever</p> <p>13 entered in any kind of a relationship with any of</p> <p>14 the other defendants in this case?</p> <p>15 A. To the best of my knowledge, no.</p> <p>16 Q. Okay. The second paragraph of this</p> <p>17 letter says, "While we were all disappointed with</p> <p>18 how this deal has unfolded, we at Sunny Fresh want</p> <p>19 to confirm that we are committed to the expansion</p> <p>20 of the Graettinger facility. Sunny Fresh is</p> <p>21 relying upon the expansion to supply animal</p> <p>22 welfare-compliant eggs to our most prominent</p> <p>23 customer."</p> <p>24 We talked about the Graettinger</p> <p>25 facility previously; correct?</p>
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<p>1 I'm sure it came to me. Do I remember receiving</p> <p>2 it? No. But it's clear to me, clearly from Mike</p> <p>3 Luker, the then-president of Sunny Fresh Cargill</p> <p>4 Kitchen Solutions.</p> <p>5 Q. Okay. You see it says in the first</p> <p>6 paragraph, "Dear Bill, in the last several months</p> <p>7 both Sunny Fresh and Daybreak have been devoting a</p> <p>8 tremendous amount of resources to the Best Daybreak</p> <p>9 venture with Bob Beavers. Despite these efforts,</p> <p>10 it is now clear that the venture will not proceed."</p> <p>11 Aside from what you've already told us</p> <p>12 about the venture with Mr. Beavers, can you</p> <p>13 enlighten us further as to what the reason why that</p> <p>14 venture didn't proceed?</p> <p>15 MR. ONDECK: Objection, asked and</p> <p>16 answered.</p> <p>17 THE WITNESS: Cargill approached us,</p> <p>18 Cargill Kitchen Solutions, Sunny Fresh, approached</p> <p>19 Daybreak and requested that we form a minority</p> <p>20 business enterprise in order to be a portion of the</p> <p>21 dedicated supply for McDonald's. And that was all</p> <p>22 at the request of McDonald's. And at that time it</p> <p>23 was going to be a complete inline complex, hens and</p> <p>24 plant.</p> <p>25 And in order to get the complex to</p>	<p>1 A. Yes.</p> <p>2 Q. In what way was Sunny Fresh going to</p> <p>3 assist in the expansion of the Graettinger</p> <p>4 facility?</p> <p>5 A. We put together a long-term agreement,</p> <p>6 and that contract helped support the funding of the</p> <p>7 expansion project, because we leveraged our balance</p> <p>8 sheet to accomplish this -- these growth</p> <p>9 opportunities. And that balance -- that long-term</p> <p>10 contract with somebody like Cargill helped support</p> <p>11 that financing endeavor.</p> <p>12 Q. And then it says, "Sunny Fresh is relying</p> <p>13 upon the expansion to supply animal</p> <p>14 welfare-compliant eggs to our most prominent</p> <p>15 customer." I presume that that customer is</p> <p>16 McDonald's?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And can you explain what is meant</p> <p>19 by you're relying upon the expansion to supply</p> <p>20 animal welfare-compliant eggs to your most</p> <p>21 prominent customer?</p> <p>22 MR. ONDECK: Objection. Objection to any</p> <p>23 implication that this is UEP welfare compliant.</p> <p>24 THE WITNESS: That we had hens already at</p> <p>25 the farm, we had a breaking plant at the farm, we</p>

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<p>1 did not have enough hens at the farm to comply and</p> <p>2 supply Kitchen Solutions with liquid,</p> <p>3 unpasteurized, raw product that complied with the</p> <p>4 McDonald's desires and protocol for hen production.</p> <p>5 BY MR. ARANOFF:</p> <p>6 Q. So just to be clear, Sunny Fresh funded</p> <p>7 and supported the expansion of the Graettinger</p> <p>8 facility; correct?</p> <p>9 A. Wrong.</p> <p>10 Q. Wrong? Okay.</p> <p>11 A. Wrong. Between our own finances and</p> <p>12 borrowed money from our financing partners, the</p> <p>13 banks, we funded the expansion. They supplied a</p> <p>14 long-term contract, which they signed and executed,</p> <p>15 and Daybreak Foods signed and executed, to support</p> <p>16 that expansion.</p> <p>17 Q. Okay. And then you'll see that in the</p> <p>18 second paragraph -- third paragraph, sorry, it</p> <p>19 says, "Now that the partnership is dissolving, we</p> <p>20 understand that there may be financial obligations</p> <p>21 that Daybreak will have to meet in the next several</p> <p>22 weeks - before the revised loan for expansion can</p> <p>23 be closed. Sunny Fresh is ready to assist Daybreak</p> <p>24 in the interim period so that the loan for the</p> <p>25 expansion can be closed on schedule. Best regards,</p>	<p>1 any way they could or needed to to make sure that</p> <p>2 we did not default on any payments to construction</p> <p>3 companies, equipment companies, so that we could</p> <p>4 keep the project moving forward, on time, to meet</p> <p>5 all the deadlines. They didn't have to do anything</p> <p>6 because we got it done without them. This is --</p> <p>7 well --</p> <p>8 Q. In what way was Sunny Fresh ready to</p> <p>9 assist Daybreak beyond anything that you've just</p> <p>10 described?</p> <p>11 MR. ONDECK: Objection, calls for</p> <p>12 speculation.</p> <p>13 THE WITNESS: I don't know. We didn't</p> <p>14 need anymore help. We got it done. They just</p> <p>15 wanted me to know, and us to know, if we needed</p> <p>16 them, they were there. Didn't have to.</p> <p>17 BY MR. ARANOFF:</p> <p>18 Q. When I use the term UEP certified eggs,</p> <p>19 do you have an understanding of what that term</p> <p>20 means?</p> <p>21 A. That those are eggs produced by companies</p> <p>22 that are -- that belong to the UEP certified</p> <p>23 program and follow that protocol.</p> <p>24 Q. Is it fair to say that your</p> <p>25 understanding -- your understanding of the UEP</p>
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<p>1 Mike Luker." Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. I read that correctly?</p> <p>4 A. Yes.</p> <p>5 Q. What financial obligations that Daybreak</p> <p>6 had to meet in the next several weeks before the</p> <p>7 revised loan for expansion can be closed are being</p> <p>8 referenced here?</p> <p>9 A. The Daybreak at the -- Daybreak undertook</p> <p>10 a significant financial risk to expand the farm,</p> <p>11 because at the end of the day, that expanded farm,</p> <p>12 along with the processing plant, was going to be</p> <p>13 sold to a venture owned 51 percent by Bob Beavers</p> <p>14 and 49 percent by Daybreak. And there -- that's</p> <p>15 how Daybreak was going to get paid its money back.</p> <p>16 But when the venture didn't happen,</p> <p>17 Cargill and Daybreak decided it wasn't the right</p> <p>18 thing to do. Daybreak was on the hook because we</p> <p>19 were paying those bills and needed to finalize a</p> <p>20 new loan because the original loan was going to be</p> <p>21 in the joint venture. Daybreak now had to secure a</p> <p>22 loan to do all that within its own organization,</p> <p>23 not within a minority business enterprise, to get</p> <p>24 this done.</p> <p>25 And they were offering to assist in</p>	<p>1 certified program is an animal welfare program</p> <p>2 organized by UEP to meet consumer demands and</p> <p>3 preferences for egg produced -- for eggs produced</p> <p>4 in a manner perceived as more humane and less</p> <p>5 stressful to hens than traditional production</p> <p>6 methods?</p> <p>7 MR. ONDECK: Objection. That document</p> <p>8 that appears that that question was read from</p> <p>9 speaks for itself, and it's confusing.</p> <p>10 MR. ARANOFF: Okay.</p> <p>11 THE WITNESS: I don't believe I agree</p> <p>12 with you.</p> <p>13 BY MR. ARANOFF:</p> <p>14 Q. You don't agree with me. Okay.</p> <p>15 (Exhibit 12 marked for identification.)</p> <p>16 BY MR. ARANOFF:</p> <p>17 Q. Mr. Rehm, I've handed you what's marked</p> <p>18 as Daybreak -- I'm sorry, as Rehm Exhibit No. 12.</p> <p>19 It is defendant Daybreak Foods Inc.'s responses and</p> <p>20 objections to direct purchaser plaintiffs' first</p> <p>21 set of interrogatories. It does not have a Bates</p> <p>22 number.</p> <p>23 I want to direct your attention</p> <p>24 to -- I'm going to ask you to take a look at</p> <p>25 interrogatory number four on page eight. And I'm</p>

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<p>1 going to also direct your attention to page ten.  2 All set?  3 A. Yep.  4 Q. Okay.  5 MR. ONDECK: Actually, I object to the  6 prior question, if it was a reading of this  7 document, without identifying this document. And  8 I'd like to confirm on the record whether or not  9 that question was reading from this document,  10 because then I'm going to add an objection that  11 that question was misleading and an attempt to  12 trick the witness.  13 MR. ARANOFF: Well, that's not a valid  14 objection, A; none of those are. B, I'm allowed to  15 read from whatever I want. C, it's meaningless and  16 I don't even know what you're talking about.  17 MR. ONDECK: Well, you can't trick the  18 witness --  19 MR. ARANOFF: I didn't try to trick the  20 witness. I asked him if that was his opinion. He  21 said no.  22 MR. ONDECK: Actually, do you want to  23 just tell us right now or do I need to go back?  24 Were you reading from our responses to  25 interrogatory number four?</p>	<p>1 Rehm, verify under penalty of perjury that I have  2 read the foregoing responses and objections of  3 Daybreak Foods, Inc. to direct purchaser  4 plaintiffs' first set of interrogatories and that  5 the responses set forth therein are true and  6 correct to the best of my knowledge, information  7 and belief, executed this 18th day of July 2012 in  8 Lake Mills, Wisconsin." And there's a signature  9 line for William R. Rehm, president and CEO of  10 Daybreak Foods, Inc., with a signature above the  11 signature line. Do you see that?  12 A. Yes.  13 Q. I read that correctly?  14 A. Yes.  15 Q. Is that your signature?  16 A. Yes.  17 Q. Okay. Now, turning to page -- back to  18 page eight for the moment, response to  19 interrogatory number four, you'll see that in the  20 second paragraph of response to interrogatory  21 number four it says, "Daybreak understands the  22 UEP-certified program to be an animal welfare  23 program organized by UEP to meet customer demands  24 and preferences for eggs produced in a manner  25 perceived as more humane and less stressful to hens</p>
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<p>1 MR. ARANOFF: Yes. And there's nothing  2 improper about that, Chris. Nothing.  3 MR. ONDECK: Without identifying the  4 document or telling us that -- I said it was  5 confusing, and going back through the question,  6 yeah, I regard that as an attempt to mislead and  7 trick the witness. Just so I'm on the record.  8 MR. ARANOFF: Okay, you're on the record.  9 That's nonsense.  10 BY MR. ARANOFF:  11 Q. So first turning your attention -- do you  12 recognize this document, Mr. Rehm?  13 A. Yes.  14 Q. And these are responses, correct, to  15 interrogatories that were propounded on you and  16 Daybreak; is that correct?  17 A. Yes.  18 Q. And have you seen this before?  19 A. Yes.  20 Q. Have you seen it in the last three days?  21 A. No.  22 Q. Okay. If you look at page ten, you'll  23 see that there's a verification on page ten?  24 A. Yep.  25 Q. And the verification says, "I, William R.</p>	<p>1 than traditional production -- than traditional  2 production methods." Do you see that?  3 A. Yes.  4 Q. Do you believe that to be accurate?  5 A. Yes.  6 Q. So when I read that to you before and you  7 said you don't agree with that, does this refresh  8 your recollection in that you now agree that this  9 is an accurate response?  10 A. I don't know that you have my correct  11 response to when you read it to me the very first  12 time. I believe my response was "I don't believe I  13 agree with that," versus "no."  14 Q. Do you now change your mind and say that  15 you do agree with it?  16 A. Yes.  17 Q. Okay. What transpired that changes your  18 mind?  19 MR. ONDECK: Objection, argumentative,  20 badgering the witness, inappropriate.  21 MR. ARANOFF: Oh, stop. What --  22 THE WITNESS: We treat all our hens in a  23 humane manner.  24 BY MR. ARANOFF:  25 Q. Right. I didn't ask you that. What I</p>

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<p style="text-align: right;">Page 178</p> <p>1 asked you was why do you now believe this was</p> <p>2 accurate but you didn't believe it was accurate</p> <p>3 when I read it to you before?</p> <p>4 MR. ONDECK: Objection, asked and</p> <p>5 answered.</p> <p>6 THE WITNESS: I wasn't sure if I agreed</p> <p>7 the first time. I didn't say I didn't agree with</p> <p>8 it.</p> <p>9 BY MR. ARANOFF:</p> <p>10 Q. Okay. But you agree with it now and you</p> <p>11 think that this is an accurate statement; correct?</p> <p>12 A. Yes.</p> <p>13 Q. If you continue on in your response to</p> <p>14 interrogatory number four, it says, "To achieve</p> <p>15 this goal, the UEP certified program sets forth</p> <p>16 various guidelines for the conditions under which</p> <p>17 egg-laying hens are raised and housed. Daybreak</p> <p>18 did not join the UEP certified program." Do you</p> <p>19 see that?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. And you understand what the UEP</p> <p>22 certified program is; correct?</p> <p>23 A. Yes.</p> <p>24 Q. And just for clarity's sake, can you</p> <p>25 explain what your understanding of that program is?</p>	<p style="text-align: right;">Page 180</p> <p>1 MR. ONDECK: Objection, confusing</p> <p>2 question. Any physical difference?</p> <p>3 THE WITNESS: An egg is an egg, sir.</p> <p>4 There's no difference in the egg.</p> <p>5 BY MR. ARANOFF:</p> <p>6 Q. Do you think that there was anything</p> <p>7 inferior in the product that you were selling</p> <p>8 because it was not UEP certified?</p> <p>9 A. We humanely treat all of our hens in the</p> <p>10 production of eggs that we then take into our</p> <p>11 plants to deliver raw, unpasteurized liquid</p> <p>12 product.</p> <p>13 Q. I understand that. But what I'm asking</p> <p>14 you is, do you believe that there's anything</p> <p>15 inferior about the product that you were selling</p> <p>16 because it was not UEP certified?</p> <p>17 A. I think at the end of the day, we do the</p> <p>18 right thing for the hen in the humane treatment and</p> <p>19 production processing of the eggs that we use in</p> <p>20 our plants.</p> <p>21 Q. You're answering a question that's not</p> <p>22 responsive to my question, Mr. Rehm. So let me try</p> <p>23 it again. It's simply a yes or no answer. Is</p> <p>24 there --</p> <p>25 A. It's not.</p>
<p style="text-align: right;">Page 179</p> <p>1 And you can use the document to refresh your</p> <p>2 recollection.</p> <p>3 A. I think it's on the record already, so I</p> <p>4 don't need to reread it.</p> <p>5 Q. Fine. And why didn't Daybreak join the</p> <p>6 UEP certified program?</p> <p>7 A. We didn't believe in the full depth and</p> <p>8 breadth of everything that was in the program</p> <p>9 specifically. We have numerous arguments against</p> <p>10 the one hundred percent rule. We fought that</p> <p>11 battle several times. And at the end of the day,</p> <p>12 it did not fit into our business plan of what our</p> <p>13 customers were asking us to do in production -- in</p> <p>14 the humane production of eggs for their use and</p> <p>15 their customers'.</p> <p>16 Q. And so in your view is there any</p> <p>17 difference between eggs that are UEP certified and</p> <p>18 eggs that are not UEP certified?</p> <p>19 A. I think for Daybreak, that we produce all</p> <p>20 our eggs utilizing humane practices for our hens.</p> <p>21 Q. Okay. But that's not what I asked you.</p> <p>22 What I asked you was, do you think that there's --</p> <p>23 do you believe there to be any difference between</p> <p>24 eggs that are UEP certified versus eggs that are</p> <p>25 not UEP certified?</p>	<p style="text-align: right;">Page 181</p> <p>1 Q. -- anything that you believe is inferior</p> <p>2 about the eggs that you pro -- that you produce and</p> <p>3 sell because they're not UEP certified?</p> <p>4 MR. ONDECK: Objection. He's answered</p> <p>5 twice the same questions.</p> <p>6 MR. ARANOFF: He hasn't answered my</p> <p>7 question.</p> <p>8 MR. ONDECK: Can I finish my objection,</p> <p>9 please? He's answered the question twice. Just</p> <p>10 because you don't like the answer, you can't keep</p> <p>11 asking and ask for one you like.</p> <p>12 MR. ARANOFF: That response is</p> <p>13 nonresponsive to what I asked.</p> <p>14 MR. ONDECK: Then object.</p> <p>15 MR. ARANOFF: So objection, not</p> <p>16 responsive, now I'll ask the question. We'll do</p> <p>17 this all day. I just want to get a simple answer.</p> <p>18 BY MR. ARANOFF:</p> <p>19 Q. Is there any difference -- withdrawn. Is</p> <p>20 the product that you sell in any way inferior as a</p> <p>21 result of not being UEP certified?</p> <p>22 MR. ONDECK: Same objection.</p> <p>23 THE WITNESS: Read that back again,</p> <p>24 please.</p> <p>25 COURT REPORTER: "Is the product that you</p>

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<p>1 sell in any way inferior as a result of not being</p> <p>2 UEP certified?"</p> <p>3 THE WITNESS: The product that we</p> <p>4 produce, utilizing our customer animal welfare,</p> <p>5 using our customer programs for the production of</p> <p>6 eggs, meets and exceeds their product</p> <p>7 specifications, which are extremely stringent. And</p> <p>8 those product specifications, whether they're</p> <p>9 McDonald's or Burger King, are extremely high and</p> <p>10 are the same.</p> <p>11 BY MR. ARANOFF:</p> <p>12 Q. Okay, let me try it a different way. I</p> <p>13 just want a yes or no answer to this question,</p> <p>14 okay? Is there anything about your product that is</p> <p>15 flawed or inferior as a result of not being UEP</p> <p>16 certified, in your opinion?</p> <p>17 MR. ONDECK: Objection, confusing. Do</p> <p>18 you mean physically flawed or inferior?</p> <p>19 MR. ARANOFF: No.</p> <p>20 MR. ONDECK: Then it's confusing.</p> <p>21 THE WITNESS: What is flawed, or what</p> <p>22 is -- what are you purporting to be flawed or not</p> <p>23 flawed?</p> <p>24 BY MR. ARANOFF:</p> <p>25 Q. Well, let me ask it a different way then</p>	<p>1 prior testimony.</p> <p>2 THE WITNESS: I believe that we follow</p> <p>3 the policies and procedures that our customers</p> <p>4 request us to utilize in the production of our eggs</p> <p>5 to then take into our plants for processing in</p> <p>6 delivering raw, unpasteurized, liquid eggs.</p> <p>7 BY MR. ARANOFF:</p> <p>8 Q. And none of your customers require you to</p> <p>9 be UEP certified; correct?</p> <p>10 A. That's correct.</p> <p>11 MR. ARANOFF: Okay. We're going to go</p> <p>12 off the record for a minute.</p> <p>13 THE VIDEOGRAPHER: We're going off the</p> <p>14 record at 1:21 p.m.</p> <p>15 (Break taken.)</p> <p>16 THE VIDEOGRAPHER: We're back on the</p> <p>17 record, beginning of disc number three, of the</p> <p>18 deposition of William Rehm. Today's date July 10,</p> <p>19 2013. The time is 2:07 p.m.</p> <p>20 BY MR. ARANOFF:</p> <p>21 Q. All right. Good afternoon, Mr. Rehm.</p> <p>22 You had -- you ate lunch?</p> <p>23 A. I think you call it eating lunch.</p> <p>24 Q. Okay. You ate lunch. Good. Excellent.</p> <p>25 And during the course of the lunch break did you</p>
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<p>1 so maybe I can clear it up. Is there any benefit</p> <p>2 in your mind to an egg being UEP certified?</p> <p>3 A. You have to look at our model. And our</p> <p>4 business model. Our model is predicated on</p> <p>5 understanding the customer, delivering what they</p> <p>6 want, when they want, where they want it and how</p> <p>7 they want it. So I don't get your question.</p> <p>8 Q. Well, let me say this. You don't have</p> <p>9 any problem selling to your customers as a result</p> <p>10 of you not being UEP certified; is that correct?</p> <p>11 A. Our model says we're going to listen to</p> <p>12 what our customers ask and what they'd like us to</p> <p>13 do in the production of our eggs and processing of</p> <p>14 our eggs so that we meet and exceed their</p> <p>15 expectation of what they need and want and desire</p> <p>16 in the products that they use in their system.</p> <p>17 Q. Have you lost out on any customers as a</p> <p>18 result of not being UEP certified?</p> <p>19 A. No.</p> <p>20 Q. Okay. And just to recapitulate your</p> <p>21 testimony from before, you believe that the</p> <p>22 policies and procedures that you employ at Daybreak</p> <p>23 are superior to the UEP certified egg; is that</p> <p>24 correct?</p> <p>25 MR. ONDECK: Objection, mischaracterizes</p>	<p>1 have any discussions about the substance of your</p> <p>2 testimony with your attorney?</p> <p>3 A. No.</p> <p>4 Q. Okay. Do you have an understanding as to</p> <p>5 what the definition of the hundred percent rule is?</p> <p>6 A. As it pertains to United Egg Producer's</p> <p>7 certified program?</p> <p>8 Q. Yes, yes.</p> <p>9 A. I believe I understand it, yes.</p> <p>10 Q. Okay. What is your understanding of the</p> <p>11 UEP's hundred percent rule?</p> <p>12 A. That all chickens, laying hens, that you</p> <p>13 own must comply with the United Egg Producer's</p> <p>14 program in order to be a certified company and a</p> <p>15 part of the United Egg Producer program.</p> <p>16 Q. And in particular, when you say the UEP's</p> <p>17 program, what do you mean by "UEP program"?</p> <p>18 A. The United Egg Producer program for egg</p> <p>19 production.</p> <p>20 Q. Okay. Just for clarity's sake, when you</p> <p>21 say "programs," would the animal welfare guidelines</p> <p>22 be, in your mind, a program? Do you need to comply</p> <p>23 with that program in order to be a hundred percent</p> <p>24 compliant?</p> <p>25 A. You're questioning deals with the hundred</p>

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<p style="text-align: right;">Page 186</p> <p>1 percent rule as it pertains to the animal welfare 2 program? 3 Q. Right. 4 A. So to be a part of that program, all your 5 hens need to comply with the UEP animal welfare 6 program. 7 Q. Are you using the term "program" 8 differently than "guidelines," or are those terms, 9 with respect to this issue, synonymous? 10 A. With regards to -- 11 MR. DAVIS: Objection to form. 12 BY MR. ARANOFF: 13 Q. You can answer. 14 A. With regards to this question, program, 15 guidelines, however you want to reference it, as 16 pertains to the question you just asked me, they're 17 one and the same. 18 Q. Okay. Do you agree that you could meet 19 your, Daybreak's customers', demands for eggs 20 without complying with the UEP's hundred percent 21 rule? 22 A. I'm sorry, would you say that again? 23 Q. Do you agree that you could meet your 24 customers' demands for your product without being 25 compliant with the hundred percent -- with the</p>	<p style="text-align: right;">Page 188</p> <p>1 period. 2 THE WITNESS: No, because you have it 3 backwards. We comply with the requests of our 4 customers. So if we comply with what they're 5 asking us to do, they're satisfied with what we're 6 doing to produce the eggs for their utilization, 7 "eggs" being raw, unpasteurized, liquid egg. 8 BY MR. ARANOFF: 9 Q. Have any of your customers requested that 10 you be compliant with the UEP's hundred percent 11 rule? 12 A. Again, we follow what our customers have 13 requested us to do, and no customer has requested 14 that we join the UEP animal welfare program. 15 Q. And when you say "customers," you're 16 talking about the three main customers you talked 17 about before, correct, which are Cargill; right? 18 A. Are you done or is that a question? 19 Q. I'll give you all three at once then. 20 A. Okay. 21 Q. Cargill, Michael Foods, and Deb-El; 22 correct? 23 A. That's correct. 24 Q. Are there any other customers that you 25 can think of that you were referencing in your last</p>
<p style="text-align: right;">Page 187</p> <p>1 UEP's hundred percent rule? 2 A. I do not have a customer that has asked 3 us to comply with the UEP program. 4 Q. Okay. And so your customers are 5 satisfied with your product, correct, even though 6 you're not working in compliance, per se, with the 7 UEP's hundred percent rule; correct? 8 MR. ONDECK: Objection, calls for 9 speculation. 10 THE WITNESS: We follow the production 11 practices that our customers request us to follow 12 in the humane production of eggs for their 13 utilization. 14 BY MR. ARANOFF: 15 Q. Okay. And as far as you know, you're 16 not -- you are not compliant with the hundred 17 percent rule as dictated by the UEP; is that 18 correct? 19 A. We're not a part of the UEP program. 20 Q. Okay. Has any of -- have any of your 21 customers, at any point in time, articulated to you 22 a complaint or concern that you're not compliant 23 with the UEP's hundred percent rule? 24 A. No. 25 MR. ONDECK: Objection, ambiguous time</p>	<p style="text-align: right;">Page 189</p> <p>1 answer? 2 A. Those three customers will -- will 3 consume 95 to 98 percent of every egg we produce. 4 Q. And McDonald's hasn't asked you to be 5 compliant with the UEP's hundred percent rule, have 6 they? 7 A. Again, you're asking the same question. 8 We produce eggs in accordance with what our 9 customers ask us to do. McDonald's is not our 10 customer. Cargill supplies eggs to McDonald's. We 11 produce the eggs for Cargill that goes to that 12 customer. 13 Q. Okay. Have you ever heard the term 14 "pooling" with respect to the egg industry? 15 A. Yes. 16 Q. What is your understanding of the term 17 pooling? 18 A. When we were debating at the UEP level 19 the hundred percent rule, there was talk of 20 needing -- could we pool the eggs, i.e., those that 21 are produced utilizing the UEP animal welfare 22 guidelines and those that are produced using 23 different guidelines and pool them together, or do 24 those eggs need to be segregated. 25 Q. Do you recall ever having given a speech</p>

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<p>1 with respect to the issue of pooling?</p> <p>2 A. I recall giving a speech on the</p> <p>3 100 percent rule.</p> <p>4 Q. Okay.</p> <p>5 (Exhibit 13 marked for identification.)</p> <p>6 BY MR. ARANOFF:</p> <p>7 Q. Mr. Rehm, I'm showing you what's been</p> <p>8 marked as Exhibit No. 13 for identification. It is</p> <p>9 a document, multi-page -- it's a multi-page</p> <p>10 document. It bears the Confidential legend and the</p> <p>11 Bates numbers DAY0021496 and continues, I believe</p> <p>12 sequentially, for seven pages to DAY0021502. I'll</p> <p>13 give you a second to take a look at it.</p> <p>14 Again, to try to move this along, I'm</p> <p>15 particularly interested in paragraphs on the top of</p> <p>16 page two, page three, and the bottom of page four.</p> <p>17 A. I'm sorry, top of page two?</p> <p>18 Q. The first paragraph on two, the big</p> <p>19 paragraph on three, and the bottom paragraph on</p> <p>20 four.</p> <p>21 A. Okay. I think I've gotten through the</p> <p>22 majority.</p> <p>23 Q. Okay. If you look at the top of page</p> <p>24 two, it says, "Somewhere along this journey, these</p> <p>25 standards went through a metamorphosis, from</p>	<p>1 And people like Daybreak that</p> <p>2 produce eggs that are broken and then sold into --</p> <p>3 or broken by further processors and used in the</p> <p>4 further processing segment of the industry, did not</p> <p>5 feel as though those customers would be willing to</p> <p>6 pay the price for the added cost, number one; and</p> <p>7 number two, the hundred -- the one hundred percent</p> <p>8 rule flew in the face of everything that Daybreak</p> <p>9 was working towards in its business model, which is</p> <p>10 that we listen to our customers and we want to</p> <p>11 produce what the customer wants, where he wants it,</p> <p>12 when he wants it, how he wants it.</p> <p>13 BY MR. ARANOFF:</p> <p>14 Q. Just for clarity's sake, you see the</p> <p>15 first sentence says, "Somewhere along this journey,</p> <p>16 these standards." Do you see that?</p> <p>17 A. Uh-huh.</p> <p>18 Q. What did you mean when you wrote "these</p> <p>19 standards"?</p> <p>20 A. The whole thing references the United Egg</p> <p>21 Producer's animal welfare standards.</p> <p>22 Q. Okay. And you talk about a metamorphosis</p> <p>23 from science-based production practices into a</p> <p>24 universal marketing program for all members of the</p> <p>25 UEP. Do you see that?</p>
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<p>1 science-based production practices into a universal</p> <p>2 marketing program for all members of the UEP. That</p> <p>3 program calls for the establishment of a seal and a</p> <p>4 UEP certification program that requires a hundred</p> <p>5 percent of the company's production follow these</p> <p>6 enhanced production practices. With this, we will,</p> <p>7 in essence, drive a wedge between the further</p> <p>8 processing portion of our industry and the graded</p> <p>9 side of the equation." Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. Am I correct that this is a copy of the</p> <p>12 speech you were referencing a few moments ago?</p> <p>13 A. I believe so, yes.</p> <p>14 Q. You talk about driving a wedge between</p> <p>15 the further processing portion of our industry and</p> <p>16 the graded side of the equation. Can you explain</p> <p>17 what you meant by that?</p> <p>18 MR. ONDECK: Objection, characterization</p> <p>19 of what Mr. Rehm talked about. Go ahead.</p> <p>20 THE WITNESS: The graded side of our</p> <p>21 industry was willing to accept -- the vast majority</p> <p>22 of the producers on the grading side of the</p> <p>23 industry were willing to accept these added costs,</p> <p>24 assuming that the market, over time, would</p> <p>25 compensate them for this added cost of production.</p>	<p>1 A. Uh-huh.</p> <p>2 Q. What did you mean when you said that?</p> <p>3 MR. ONDECK: Objection. Could the</p> <p>4 witness answer verbally and not go "uh-huh."</p> <p>5 THE WITNESS: Sorry. I apologize. What</p> <p>6 did I mean. That means through the journey,</p> <p>7 somehow the animal welfare committee decided that</p> <p>8 they wanted, in order to participate in the</p> <p>9 program, all of your hens had to be on the program</p> <p>10 or you couldn't be a part of the program. That was</p> <p>11 part of -- when I say metamorphosis is a</p> <p>12 transition. This is not a destination.</p> <p>13 Animal welfare program, whether</p> <p>14 it's United Egg Producers or a specific</p> <p>15 customer-driven program, is not a destination.</p> <p>16 It's not, this is what we're going to do. It never</p> <p>17 changes because it's a journey. And as we move on</p> <p>18 the journey, we find better ways of accomplishing</p> <p>19 that, otherwise we'd still all be driving a Model</p> <p>20 A.</p> <p>21 BY MR. ARANOFF:</p> <p>22 Q. So is it correct to say that the hundred</p> <p>23 percent rule program moved from a science-based</p> <p>24 production program to a marketing program; is that</p> <p>25 accurate?</p>

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<p>1 MR. ONDECK: Objection, document speaks 2 for itself. 3 THE WITNESS: No, I -- I think I said 4 what I said here. I don't think -- the components 5 of the program that pertain to what we're doing 6 with production are all science-based. But the 7 requirement for 100 percent of all your production 8 have to be there in order to participate in the 9 United Egg Producer's certified program was the 10 portion that I felt was not appropriate. 11 BY MR. ARANOFF: 12 Q. What did you mean when you said 13 "universal marketing program"? 14 A. That they were trying to create 15 everybody's eggs, being everybody producing the 16 eggs in the exact same fashion. 17 Q. For purposes -- for marketing purposes? 18 A. No. That everybody would produce eggs in 19 the exact same fashion. What are you going to do 20 with your product? Are you going to sit on it or 21 are you going to sell it? 22 Q. You're going to sell it; right? 23 A. Correct. 24 Q. All right. Now, you then move on, on the 25 top of page three, you say, "We, in essence, are</p>	<p>1 our customers weren't asking for it. 2 Q. Okay. And then further down on page 3 three it said, "I would suggest that adding eight 4 to \$.10 to our cost of production will make us 5 inefficient producers, not geniuses, unless the 6 customer is willing to permanently pay the premium 7 associated with these enhanced practices." What 8 did you mean by that? 9 A. That the animal agriculture in general, 10 and specifically egg production, is an extremely 11 small margin business. We deal in fractions of 12 cents. And when you're adding whole pennies and 13 multiple of them in terms of eight to \$.10 a dozen 14 to the cost, it's a significant cost which puts you 15 in a far more volatile position, if you're a market 16 producer, to be in an upside down position. 17 Now, in our case, eight to \$.10, 18 because we're on a base price, with adjustment, but 19 predicated on the Chicago Board of Trade, if our 20 customers were not willing to pay that premium, we 21 would be upside down on every pound of egg we 22 produced and sold. We would, in essence, lose 23 money on every pound of egg we produced and sold. 24 Q. And then on the bottom of page four, it 25 says "For these and many other reasons, I" --</p>
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<p>1 forcing all producers to incur additional 2 production costs even though many of their 3 individual customers will likely refuse to pay a 4 premium." Do you see that? 5 A. Yes. 6 Q. What did you mean by that? 7 A. That we had several of our customers that 8 were unwilling to pay the additional production 9 costs that would be incurred in order to comply 10 with the standards of the United Egg Producers. 11 And again, back to our base business model, we do 12 what they ask for, when they want it, where they 13 want it and how they want it. 14 If they weren't asking for it, we 15 weren't going to do it for them because we want to 16 supply what they're looking for, not tell them what 17 they are going to get. 18 Q. So in your opinion, it didn't make sense 19 to follow a program that wasn't based on what the 20 customers were asking for; right? 21 MR. ONDECK: Objection, calls for 22 speculation. 23 BY MR. ARANOFF: 24 Q. Okay. You can answer. 25 A. We -- we did not join the program because</p>	<p>1 A. Apologize. I'm not there yet. 'Cause 2 you're going to ask me is that right, and I'm not 3 there yet. Okay. Go ahead. 4 Q. "For these and many other reasons I 5 advocate that, first and foremost, we need to 6 listen to our customers and what they want. We 7 should avoid falling into the one-size-fits-all 8 syndrome, thus, I still feel we need to find some 9 compromised position from the hundred percent 10 requirement or no certification program." Right? 11 That was your position at that time? 12 A. Yes. 13 Q. And does that still remain your position 14 to this day? 15 A. Yes. We still are not part and still are 16 not members of the UEP certified program. 17 Q. Okay. As you sit here today, you don't 18 think that the product that you sell to your 19 customers is any way inferior as a result of not 20 having participated in the UEP's one hundred 21 percent rule program? 22 MR. ONDECK: Objection. 23 THE WITNESS: I thought we covered this 24 fairly extensively before we went to break, sir. I 25 don't think my answers have changed.</p>

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<p>1 BY MR. ARANOFF:</p> <p>2 Q. But that was with respect to the UEP</p> <p>3 certified program. Now I'm asking you with respect</p> <p>4 to the one hundred percent rule. Do you think that</p> <p>5 not being a hundred percent compliant with the</p> <p>6 UEP's programs resulted in an inferior product on</p> <p>7 your part?</p> <p>8 MR. ONDECK: Objection.</p> <p>9 THE WITNESS: We produce our eggs</p> <p>10 utilizing humane practices and produce superior</p> <p>11 quality product that meet and exceed our customer</p> <p>12 specifications for the bacterial and microbial</p> <p>13 portion, as well as temperature and everything else</p> <p>14 that our customers are asking us to meet.</p> <p>15 BY MR. ARANOFF:</p> <p>16 Q. So that's a no?</p> <p>17 MR. ONDECK: Objection, mischaracterizes</p> <p>18 his testimony.</p> <p>19 THE WITNESS: I answered the question,</p> <p>20 sir.</p> <p>21 MR. ARANOFF: Okay.</p> <p>22 (Exhibit 14 marked for identification.)</p> <p>23 BY MR. ARANOFF:</p> <p>24 Q. Mr. Rehm, I'm going to show you what's</p> <p>25 been marked as Rehm Exhibit 14 for purposes of</p>	<p>1 signed on as a supporter of this memo because I</p> <p>2 oppose the one hundred percent rule.</p> <p>3 Q. Right. So how do you know that from the</p> <p>4 basis of this document? 'Cause it only -- just for</p> <p>5 the record, it only has your signature on it. Are</p> <p>6 you somehow claiming that this document is</p> <p>7 incomplete?</p> <p>8 MR. ONDECK: Objection, mischaracterizes</p> <p>9 that he would only know things from the basis of</p> <p>10 the document.</p> <p>11 THE WITNESS: This is not a document that</p> <p>12 I drafted and developed. This is a document that I</p> <p>13 believe was drafted by somebody at Sparboe,</p> <p>14 possibly Garth Sparboe. And I'm on here as a</p> <p>15 signator. And there are multiple signators to this</p> <p>16 document supporting this memo.</p> <p>17 BY MR. ARANOFF:</p> <p>18 Q. But when you say there's multiple</p> <p>19 signators to the document, the document that you're</p> <p>20 holding, which is three pages in length, for</p> <p>21 purposes of clarification for the record, only</p> <p>22 contains one signator on it; is that right?</p> <p>23 A. The document in its entirety, which I do</p> <p>24 not have, never had in my file, was signed by</p> <p>25 multiple UEP members supporting what was said in</p>
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<p>1 identification, a multi-page document bearing a</p> <p>2 Confidential legend. It's a document entitled</p> <p>3 Memorandum, and it bears the Bates number</p> <p>4 DAY0014292 and continues to DAY0014294.</p> <p>5 For purposes of expediting this, I will</p> <p>6 tell you that I intend to ask you questions only</p> <p>7 with respect to the first page, under the title:</p> <p>8 Problem Number One, the Hundred Percent Rule, and</p> <p>9 just verify that it's your signature on the bottom</p> <p>10 of page three. All set?</p> <p>11 A. Yeah. Yes.</p> <p>12 Q. Okay. Recognize this document, Mr. Rehm?</p> <p>13 A. Yes, I do.</p> <p>14 Q. Okay. And just for clarification</p> <p>15 purposes, this document is -- bears your signature</p> <p>16 at the bottom, William Rehm, president and CEO of</p> <p>17 Daybreak Foods, Inc.?</p> <p>18 A. Yes. And there are multiple signators to</p> <p>19 this document.</p> <p>20 Q. Okay, I'm holding what I think is the</p> <p>21 complete document, and I only see your signature on</p> <p>22 it.</p> <p>23 A. No, I believe this document was produced</p> <p>24 by Sparboe with members -- all the members of the</p> <p>25 UEP that opposed the one hundred percent rule. I'm</p>	<p>1 this memorandum to Al Pope and Gene Gregory.</p> <p>2 Q. Who are the -- besides Garth Sparboe, who</p> <p>3 you just identified, is there anybody else that you</p> <p>4 can recollect that was a signator to this document</p> <p>5 even though their signature doesn't appear on the</p> <p>6 document today?</p> <p>7 A. I would be speculating the other</p> <p>8 signators to be Michael Foods.</p> <p>9 Q. Okay. Anyone else?</p> <p>10 A. Jim Dean. And these are pure</p> <p>11 speculation. I do not have -- because I've never</p> <p>12 had in my hands all the signature pages of</p> <p>13 everybody else.</p> <p>14 MR. ONDECK: I object to the authenticity</p> <p>15 of this document.</p> <p>16 BY MR. ARANOFF:</p> <p>17 Q. Well, it was produced from within</p> <p>18 Daybreak's file because it bears the legend of</p> <p>19 Daybreak on it. So it was produced from someone in</p> <p>20 your company, presumably you.</p> <p>21 A. Fine.</p> <p>22 Q. Before we address Mr. Ondeck's</p> <p>23 objections, other than Michael Foods, Garth</p> <p>24 Sparboe, and Jim Dean, is there anybody else that</p> <p>25 you can think of that would have been a signator to</p>

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<p>1 this document?</p> <p>2 MR. ONDECK: Objection, misstates</p> <p>3 testimony. You believe were signatories.</p> <p>4 THE WITNESS: Yes. I'm not sure about</p> <p>5 Wabash Valley, possibly.</p> <p>6 BY MR. ARANOFF:</p> <p>7 Q. Anyone else?</p> <p>8 A. I know -- I believe there were more, but</p> <p>9 I cannot recall who they may possibly be.</p> <p>10 Q. Okay. And if I wanted to -- assuming</p> <p>11 that you're correct and that there are more</p> <p>12 signators to this document, do you know of anyone,</p> <p>13 as you sit here today, that is in possession of a</p> <p>14 full copy of this document?</p> <p>15 A. Do not.</p> <p>16 Q. Have you seen this fully executed</p> <p>17 document at any point in time?</p> <p>18 A. No.</p> <p>19 Q. So how do you know that there are more</p> <p>20 signatories to it?</p> <p>21 A. Because I -- this was -- I know that this</p> <p>22 was something put together by the Sparboe</p> <p>23 organization in soliciting support. This is not a</p> <p>24 document that I drafted. And if you look at the</p> <p>25 top, it says "to" and it says "from the</p>	<p>1 you're objecting to your own production.</p> <p>2 MR. ONDECK: Correct. It's a document</p> <p>3 fragment. I object.</p> <p>4 BY MR. ARANOFF:</p> <p>5 Q. If you look at the middle of the first</p> <p>6 page under problem number one, "the hundred percent</p> <p>7 rule," it says, "The problem is particularly</p> <p>8 troublesome to us for two reasons: One, the</p> <p>9 marketing economic perspectives involved, and two,</p> <p>10 procedurally how it was adopted." Okay. Then, if</p> <p>11 you skip three lines, or to the middle of the third</p> <p>12 line of the first paragraph, it says, "Imposing the</p> <p>13 hundred percent rule will have the effect of</p> <p>14 commoditizing the market and thus increasing the</p> <p>15 difficulty of differentiating and capturing higher</p> <p>16 margins, especially for smaller producers.</p> <p>17 It is inconceivable that the</p> <p>18 demand for eggs in all of its forms will not suffer</p> <p>19 as a result on increasing the production cost of</p> <p>20 shellings. True, prices may rise in the short-term</p> <p>21 as flock sizes are decreased, but those gains will</p> <p>22 be short lived and will not endure as supply and</p> <p>23 demand move back to equilibrium." Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. Have I read that correctly?</p>
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<p>1 undersigned."</p> <p>2 Q. Right.</p> <p>3 A. Not just me. There are multiple</p> <p>4 signators to the document.</p> <p>5 Q. Okay. Well, for the record, the only</p> <p>6 signator on this document, again, is you, Mr. Rehm.</p> <p>7 There's a space after your signature and company, a</p> <p>8 sizeable space which is blank, there's no signature</p> <p>9 there. And I'm unaware of there being any other</p> <p>10 page of this document. But that's a discussion</p> <p>11 that perhaps we can have another time.</p> <p>12 MR. ONDECK: Object to counsel</p> <p>13 testifying.</p> <p>14 MR. ARANOFF: Anyway --</p> <p>15 MR. ONDECK: I note on page three it</p> <p>16 says, "This document is signed in counterparts,"</p> <p>17 which is commonly understood in the legal field as</p> <p>18 there could be multiple people signing on different</p> <p>19 pages.</p> <p>20 MR. ARANOFF: Well, then the document</p> <p>21 wasn't adequately produced because we don't have</p> <p>22 the remaining pages.</p> <p>23 MR. ONDECK: I object to the authenticity</p> <p>24 of this document. It's a fragment.</p> <p>25 MR. ARANOFF: You produced it, so I guess</p>	<p>1 A. Yes.</p> <p>2 Q. Do you agree with this?</p> <p>3 A. I agree with the bulk of it. The reason</p> <p>4 for my signature on this document was supporting</p> <p>5 the argument against the one hundred percent rule.</p> <p>6 That's why I signed on. All the intricacies of</p> <p>7 Sparboe's arguments in here can, at times, be</p> <p>8 verbose and at times be bullying.</p> <p>9 My signature to be part of this group</p> <p>10 of signators to the document was to show support</p> <p>11 that I do not believe, and we do not believe, the</p> <p>12 one hundred percent rule is the right way to go in</p> <p>13 attacking -- the one hundred percent rule is not</p> <p>14 appropriate.</p> <p>15 Q. Okay. But --</p> <p>16 MR. ONDECK: Object to the answer. Move</p> <p>17 to strike the word "bullying."</p> <p>18 BY MR. ARANOFF:</p> <p>19 Q. Okay. But the signature at the bottom is</p> <p>20 still your signature; correct?</p> <p>21 A. I've answered that.</p> <p>22 Q. Okay. And are you aware at this time of</p> <p>23 any -- having seen this document, of you having</p> <p>24 responded to it or objected to it in any way,</p> <p>25 shape, or form?</p>

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<p>1 A. No.</p> <p>2 Q. Okay. Now, if you look at the bottom</p> <p>3 also of page three of the document, above your</p> <p>4 signature, about -- not the last paragraph, but the</p> <p>5 penultimate paragraph says, "We believe, as we know</p> <p>6 UEP does as well, that the main objective of animal</p> <p>7 husbandry programs is to have one unified program</p> <p>8 which is centered around customers' needs and</p> <p>9 requirements. Should we not be able to reach a</p> <p>10 unified compromise or alternative program, our</p> <p>11 industry will soon end up with exactly what it does</p> <p>12 not want, fragmentation and discord." Do you see</p> <p>13 that?</p> <p>14 A. Yes.</p> <p>15 Q. Did I read that correctly?</p> <p>16 A. Yes.</p> <p>17 Q. What did you mean when you said</p> <p>18 "fragmentation and discord"?</p> <p>19 MR. ONDECK: Objection.</p> <p>20 THE WITNESS: I didn't write it.</p> <p>21 BY MR. ARANOFF:</p> <p>22 Q. But you signed onto it; right?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. So did you -- did you -- you</p> <p>25 signed on to it assuming that you agreed with the</p>	<p>1 Q. -- proceed. All set?</p> <p>2 A. Yes.</p> <p>3 MR. ONDECK: Objection as to the</p> <p>4 legibility of the copy of this document.</p> <p>5 MR. ARANOFF: What about it is illegible?</p> <p>6 MR. ONDECK: I can't read many of the</p> <p>7 words.</p> <p>8 MR. ARANOFF: Again, this was a document</p> <p>9 that was produced by Daybreak. Presumably you guys</p> <p>10 produced it.</p> <p>11 MR. ONDECK: It could have been written</p> <p>12 in Chinese and we produced it. I can't read it.</p> <p>13 MR. ARANOFF: Well, let's see.</p> <p>14 BY MR. ARANOFF:</p> <p>15 Q. Did you write this document? Is this</p> <p>16 your handwriting?</p> <p>17 A. Yes.</p> <p>18 Q. And if you look at the top right-hand</p> <p>19 corner, you'll see it says "page one of three." Do</p> <p>20 you see that?</p> <p>21 A. Yes.</p> <p>22 Q. There's a signature next to that. Do you</p> <p>23 know whose signature that is?</p> <p>24 A. To the right of it?</p> <p>25 Q. Yeah. Or initials, I should say, to the</p>
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<p>1 positions taken in the document; correct?</p> <p>2 MR. ONDECK: Objection, mischaracterizes</p> <p>3 prior testimony.</p> <p>4 BY MR. ARANOFF:</p> <p>5 Q. Okay.</p> <p>6 A. I already testified that I've signed on</p> <p>7 because I was opposed to the one hundred percent</p> <p>8 rule. And whatever way I could to get it in front</p> <p>9 of the UEP, this was an additional way of showing</p> <p>10 our opposition to the one hundred percent rule.</p> <p>11 Q. Okay.</p> <p>12 (Exhibit 15 marked for identification.)</p> <p>13 BY MR. ARANOFF:</p> <p>14 Q. Mr. Rehm, I'm going to show you what's</p> <p>15 been marked as Rehm Exhibit 15 for purposes of</p> <p>16 identification.</p> <p>17 A. Yep.</p> <p>18 Q. It's a three-page document labeled</p> <p>19 Confidential, bearing the Bates number DAY0024746</p> <p>20 and continuing to DAY0024748. I'll give you a</p> <p>21 minute to take a look at it. I'm going to</p> <p>22 primarily focus on the top of the first page, the</p> <p>23 Roman numeral number one. When you're all set, we</p> <p>24 can --</p> <p>25 A. Okay.</p>	<p>1 right.</p> <p>2 A. Okay. Those are my initials.</p> <p>3 Q. And there's a date underneath it?</p> <p>4 A. Yes.</p> <p>5 Q. Can you make out what the date is?</p> <p>6 A. 2/6/03.</p> <p>7 Q. Okay. And at the top it lists a variety</p> <p>8 of people; do you see that?</p> <p>9 A. Yep.</p> <p>10 Q. Can you identify the people that are</p> <p>11 listed there, please?</p> <p>12 A. Ken Looper, Paul Bahan, Joe Fortin, Bob</p> <p>13 Krouse, Garth Sparboe, Bill Gaucher (phonetic.)</p> <p>14 Q. Okay. And from what company is Ken</p> <p>15 Looper?</p> <p>16 A. Cal-Maine Foods.</p> <p>17 Q. Okay. And from what company is Paul</p> <p>18 Bahan?</p> <p>19 A. Bahan.</p> <p>20 Q. Bahan.</p> <p>21 A. I'm not sure. I'm thinking it's Tampa</p> <p>22 Farm Services, but I'm not positive.</p> <p>23 Q. And Joe Fortin?</p> <p>24 A. Moark.</p> <p>25 Q. Okay. And Bob Krouse?</p>

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<p>1 A. Midwest Poultry Services.  2 Q. Okay. And Garth Sparboe?  3 A. Sparboe.  4 Q. Right. And Bill Gaucher is Gaucher or  5 Goshay?  6 A. Gaucher.  7 Q. Gaucher. Bill Gaucher.  8 A. Michael Foods.  9 Q. Do you have a recollection as you sit  10 here today when this was -- when you wrote this?  11 A. February 6, 2003.  12 Q. Okay. Do you remember -- do you remember  13 where you were when this was written?  14 A. I don't remember where specific I was. I  15 believe we were in Minneapolis at a meeting trying  16 to figure out if we could come -- develop a  17 compromise to the one hundred percent rule.  18 Q. Okay. To the best of your recollection,  19 going back to Exhibit No. 14, which we just talked  20 about, are these people that are on the handwritten  21 document, which is Exhibit 15, the additional  22 signators to Exhibit 14?  23 A. No.  24 Q. Okay. Are any of them the same other  25 than Garth Sparboe?</p>	<p>1 the hundred percent rule was supply management;  2 correct?  3 A. Wrong.  4 MR. ONDECK: Objection.  5 BY MR. ARANOFF:  6 Q. So why is that written there?  7 A. These are my notes from the meeting, and  8 we -- if you look at the top three names, Looper,  9 Bahan and Fortin, they're -- we had two  10 contingencies at this meeting. One contingency was  11 in support of the hundred percent rule, the other  12 contingency was opposed to the one hundred percent  13 rule. And we were trying to see could we get --  14 come to a meeting of the minds.  15 Q. Who is -- I'm sorry if I interrupted you.  16 No, go ahead.  17 MR. ONDECK: Please finish your answer.  18 THE WITNESS: These are just simply notes  19 that I took from their explanation of why they felt  20 the hundred percent rule was required.  21 BY MR. ARANOFF:  22 Q. Okay. And you say "they." So can you  23 please go through the people at the top of the page  24 and tell me which ones of those were in favor of  25 the hundred percent rule and which ones of those</p>
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<p>1 A. Are any of them the same in what fashion?  2 As --  3 Q. Well, you testified -- let me try to be  4 as clear as I can. You testified just a few  5 moments ago with respect to Exhibit No. 14 that  6 there were other signators to this --  7 A. Yes.  8 Q. -- to this document, okay? One of whom  9 you thought was Garth Sparboe; right?  10 A. Yes.  11 Q. You mentioned a few others, all right:  12 Jim Dean was one, and there may be some others from  13 there. I'm asking you whether, when you look at  14 Exhibit No. 15, that refreshes your recollection as  15 to who some of the other signators to Exhibit  16 No. 14 might have been.  17 A. It does not refresh my memory.  18 Q. Okay. You see, in Roman numeral number  19 one, okay, it says, "Reason for one hundred percent  20 rule." You see that?  21 A. Uh-huh. Uh-huh.  22 Q. And A is supply management; right?  23 A. Uh-huh.  24 Q. Okay. Do you -- I presume that having  25 written this, you agree that one of the reasons for</p>	<p>1 were against the hundred percent rule.  2 MR. ONDECK: Objection, I think it calls  3 for speculation.  4 MR. ARANOFF: Well, if you know, it's not  5 speculation. And you gotta stop doing that,  6 because that's a speaking objection.  7 MR. ONDECK: Objection, speculation.  8 MR. ARANOFF: Same response.  9 MR. ONDECK: That's not a speaking  10 objection.  11 BY MR. ARANOFF:  12 Q. Go ahead.  13 A. My expectation and understanding was  14 Looper, Bahan and Fortin were on the -- for the one  15 hundred percent rule; Sparboe, Gaucher, Krouse was  16 willing to be on both sides trying to create common  17 ground for everybody. And you know my position.  18 Q. Right. So when you said the reasons for  19 the hundred percent rule supply management, that  20 represented, to the best of your knowledge, the  21 opinions of Looper, Bahan, and Fortin?  22 A. And everybody that was in favor of the  23 one hundred percent rule at the United Egg  24 Producers.  25 Q. And then if you look at D, same under</p>

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<p>1 Roman numeral one --</p> <p>2 A. Yep.</p> <p>3 Q. -- it says, "Wedged between breakers and</p> <p>4 shell to prohibit breakers from selling shells."</p> <p>5 Can you read what it says after that?</p> <p>6 A. Yeah. "Shells to the grader at certain</p> <p>7 times of the year."</p> <p>8 Q. What did you mean by that?</p> <p>9 A. That as we're going through here, this</p> <p>10 was -- they told us why they thought, in A and B</p> <p>11 and C, why they needed to have it, and then we put</p> <p>12 down opposed to it because we -- we felt like this</p> <p>13 was a reason that they wanted the hundred percent</p> <p>14 rule, and that this would drive a wedge between the</p> <p>15 shell egg market and the breaker -- breaker market.</p> <p>16 Q. Just a second. Have you heard of an</p> <p>17 entity -- and I think we may have talked about it</p> <p>18 before, but again, just for context purposes, have</p> <p>19 you heard of an entity called Day Lay Eggs?</p> <p>20 A. Yes.</p> <p>21 Q. What is Day Lay Eggs?</p> <p>22 A. It was a company in the state of Ohio</p> <p>23 that produced and sold graded product.</p> <p>24 Q. Did there come a point in time where</p> <p>25 Daybreak purchased day leg eggs?</p>	<p>1 A. Day Lay had a UEP certification number.</p> <p>2 Q. And upon your purchase of Day Lay Eggs in</p> <p>3 roughly 2007, were they still UEP certified?</p> <p>4 A. At the time we acquired the assets, Day</p> <p>5 Lay still had a UEP certified number.</p> <p>6 Q. Okay. And when you purchased Day Lay</p> <p>7 Eggs, was it your intention to keep them UEP</p> <p>8 certified or to take them off the certification</p> <p>9 program?</p> <p>10 MR. ONDECK: Objection,</p> <p>11 mischaracterization.</p> <p>12 THE WITNESS: Day Lay had some customers</p> <p>13 that we desired to try to maintain in the interim</p> <p>14 while we transitioned the processing plants into</p> <p>15 inline breaking operations.</p> <p>16 BY MR. ARANOFF:</p> <p>17 Q. Did there come a point in time where Day</p> <p>18 Lay went under some kind of a name change?</p> <p>19 A. Day Lay?</p> <p>20 Q. Yeah.</p> <p>21 A. I don't know.</p> <p>22 Q. Okay. Is there any -- well, let me</p> <p>23 withdraw that question. Have you heard of an</p> <p>24 entity called New Day Farms?</p> <p>25 A. New Day Farms is a wholly-owned</p>
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<p>1 A. We purchased the assets of day leg eggs,</p> <p>2 not -- I need to recharacterize that. I apologize.</p> <p>3 We purchased certain assets of day leg eggs.</p> <p>4 Q. What assets of day leg eggs did you</p> <p>5 purchase?</p> <p>6 A. We purchased a couple of their farms and</p> <p>7 processing plants.</p> <p>8 Q. Was there ever a payment where -- well,</p> <p>9 withdrawn. What kind of products did day leg eggs</p> <p>10 produce?</p> <p>11 A. I believe I said that already. They're</p> <p>12 an integrated market.</p> <p>13 Q. And just for purposes, again, of context,</p> <p>14 when you say they're in the graded market, what</p> <p>15 does that mean?</p> <p>16 A. Means that the eggs that they sold ended</p> <p>17 up -- were sold to the retail establishments for</p> <p>18 sale to the consumer.</p> <p>19 Q. And you may have said this, and I may</p> <p>20 have missed it, so I apologize. What year did you</p> <p>21 make that acquisition?</p> <p>22 A. 2007, I believe.</p> <p>23 Q. At any point in time prior to your</p> <p>24 purchase of day leg eggs were day leg eggs UEP</p> <p>25 certified?</p>	<p>1 subsidiary of Daybreak Foods.</p> <p>2 Q. At any point in time was -- is there any</p> <p>3 relationship at all between New Day Farms and Day</p> <p>4 Lay Egg Farms? Are they related in any way other</p> <p>5 than --</p> <p>6 A. I think I told you, sir. New Day is a</p> <p>7 wholly-owned subsidiary of Daybreak.</p> <p>8 Q. Right.</p> <p>9 A. And that is an entity that then acquired</p> <p>10 the assets, some of the assets, of Day Lay Egg</p> <p>11 Farm.</p> <p>12 (Exhibit 16 marked for identification.)</p> <p>13 BY MR. ARANOFF:</p> <p>14 Q. Mr. Rehm, I'm showing you what's been</p> <p>15 marked as Rehm Exhibit 16 for purposes of</p> <p>16 identification. It's an e-mail, it's two pages in</p> <p>17 length, labeled Highly Confidential. Bates number</p> <p>18 DAY0003359 through DAY0003360. Take a look at the</p> <p>19 document for a minute and then I'll ask you a</p> <p>20 question.</p> <p>21 A. Okay.</p> <p>22 Q. Okay. You recognize this document?</p> <p>23 A. Yes.</p> <p>24 Q. What do you recognize it to be?</p> <p>25 A. A memo from Gene Gregory.</p>

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<p>1 Q. And in particular, you'll see that this</p> <p>2 is an e-mail from Gene Gregory to Linda Ricard and</p> <p>3 Patricia at United Egg. Who is Linda Ricard, do</p> <p>4 you know?</p> <p>5 A. An employee of UEP.</p> <p>6 Q. And who is Patricia at United Egg?</p> <p>7 A. Same answer, no, I'm --</p> <p>8 Q. Did you say you don't know?</p> <p>9 A. Nope.</p> <p>10 Q. And you're CC'd on it; right?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And the subject is New Day Farm?</p> <p>13 A. Yes.</p> <p>14 Q. New Day Farms, LLC, I should say. If you</p> <p>15 look at the -- at the e-mail sent from Gene Gregory</p> <p>16 to those individuals, it says, "Linda and Patricia,</p> <p>17 the Day Lay Egg Farm assets in Ohio has been sold</p> <p>18 to Bill Rehm personally and the farm name has been</p> <p>19 changed to New Day Farms, LLC." You see that?</p> <p>20 A. Uh-huh.</p> <p>21 Q. Okay. You personally -- I assume</p> <p>22 "personally" means different than Daybreak -- than</p> <p>23 Daybreak; is that correct? You bought that</p> <p>24 personally? You bought Day Lay Egg Farm's assets</p> <p>25 in Ohio personally?</p>	<p>1 the animal welfare standards, the one hundred</p> <p>2 percent rule, and that didn't work.</p> <p>3 BY MR. ARANOFF:</p> <p>4 Q. Why didn't that work?</p> <p>5 A. Because I thought if we had New Day, and</p> <p>6 New Day was on the program, New Day's -- New Day's</p> <p>7 eggs would be a hundred percent and Daybreak would</p> <p>8 be fine. And working with Gene, he misunderstood</p> <p>9 and assumed that we were just making the change and</p> <p>10 going to be a hundred percent all throughout. And</p> <p>11 we couldn't accept that, because again, we're back</p> <p>12 to Daybreak, Daybreak, New Day, does what our</p> <p>13 customers are looking for.</p> <p>14 So Gene got out in front of himself.</p> <p>15 We couldn't accept it. Never became a certified</p> <p>16 company, never had a certified number, never took</p> <p>17 on the certification of 111 because we couldn't do</p> <p>18 it. We couldn't accept it because we're back to</p> <p>19 the one hundred percent rule and all that.</p> <p>20 Q. So is it your testimony that New Day</p> <p>21 Farms never became UEP certified?</p> <p>22 A. That's correct.</p> <p>23 Q. Then it says, "We are also working with</p> <p>24 Bill to move Daybreak Foods -- Daybreak Foods into</p> <p>25 the UEP certified status. We will provide</p>
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<p>1 A. No. Gene has it mischaracterized.</p> <p>2 Q. Okay. So what's the correct answer to</p> <p>3 that?</p> <p>4 A. New Day Farms purchased some of the</p> <p>5 assets of Day Lay Egg Farm.</p> <p>6 Q. Okay. And it says in the third</p> <p>7 paragraph, "We have agreed to change Day Lay's UEP</p> <p>8 certified," which UEP and certified are in quotes</p> <p>9 and are bolded, "animal welfare status to the name</p> <p>10 of New Day Farms, LLC, and transfer the</p> <p>11 certification number 111 to New Day Farms, LLC.</p> <p>12 Please change your records to reflect this. And</p> <p>13 any further published list of certified companies</p> <p>14 should reflect New Day Farms, LLC as certified. I</p> <p>15 will notify USDA of this change, and that when the</p> <p>16 2007 audit is conducted, that it be done so in the</p> <p>17 name of New Day Farms, LLC." Do you see that?</p> <p>18 A. Uh-huh.</p> <p>19 Q. Is that accurate?</p> <p>20 MR. ONDECK: Objection, confusing</p> <p>21 question.</p> <p>22 THE WITNESS: It is what it is. But</p> <p>23 Gene, as he so often does, gets ahead of himself</p> <p>24 and confused, and assumed that we were going to be</p> <p>25 able to comply throughout New Day and Daybreak with</p>	<p>1 information as this transition is more clearly</p> <p>2 identified." And I assume that that's further</p> <p>3 identification of what you were saying before of</p> <p>4 Gene getting ahead of himself?</p> <p>5 A. Yes.</p> <p>6 (Exhibit 17 marked for identification.)</p> <p>7 BY MR. ARANOFF:</p> <p>8 Q. Mr. Rehm, I'm showing you what's been</p> <p>9 marked as Rehm Exhibit 17 for purposes of</p> <p>10 identification. It's a single document labeled</p> <p>11 Confidential, bearing the Bates range DAY0003559.</p> <p>12 It purports to be an e-mail to Terry Baker, Toby</p> <p>13 Catherman from you dated Wednesday, 8/15/2007, with</p> <p>14 the subject of UEP certification. Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. I'll give you a second to look at it, and</p> <p>17 then we can talk about it.</p> <p>18 A. Okay.</p> <p>19 Q. Okay. You recognize this e-mail?</p> <p>20 A. I don't recall writing it, but --</p> <p>21 Q. Okay. First, who is Terry Baker?</p> <p>22 A. He is one of the, I want to call him</p> <p>23 purchasing agents, for Michael Foods.</p> <p>24 Q. Okay. And who is Toby Catherman?</p> <p>25 A. Same thing.</p>

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<p>1 Q. Okay. It says, "Gentlemen" -- you</p> <p>2 purportedly wrote this. "Gentlemen, I would like</p> <p>3 to have a conversation with the two of you sometime</p> <p>4 today if possible. Gene at the UEP is threatening</p> <p>5 New Day Farms with explosion from the UEP certified</p> <p>6 program unless we change Daybreak's production</p> <p>7 practices at the Oak Ridge facility." What</p> <p>8 specifically were you referencing in this sentence?</p> <p>9 A. That he was not going to allow New Day to</p> <p>10 have a UEP certified number.</p> <p>11 Q. And just for clarification purposes, I</p> <p>12 read that correctly; right?</p> <p>13 A. Yeah. Well, the spelling on my part</p> <p>14 wasn't very good.</p> <p>15 Q. Right. I'm not trying to embarrass you,</p> <p>16 I'm just trying to clarify. It says "explosion";</p> <p>17 you meant "expulsion"; is that right?</p> <p>18 A. Yes.</p> <p>19 Q. So anyway, yeah, I think I might have</p> <p>20 interrupted you. So again, what did you mean</p> <p>21 by -- by this sentence, just for clarity's sake?</p> <p>22 A. I thought I answered that.</p> <p>23 Q. You did, but I didn't hear you. Could</p> <p>24 you repeat what you said?</p> <p>25 A. No. You can have her read it back if you</p>	<p>1 Q. But this says "UEP animal welfare</p> <p>2 production practices"; do you see that?</p> <p>3 A. Uh-huh.</p> <p>4 Q. So why would you be referencing the UEP</p> <p>5 animal welfare production practices when</p> <p>6 you're -- when your practice had been customer</p> <p>7 driven?</p> <p>8 A. Because not having a crystal ball and</p> <p>9 knowing -- having a gentleman sitting across the</p> <p>10 table asking the questions that you're asking, I</p> <p>11 used those words in a very generic sense to</p> <p>12 reference an animal welfare program.</p> <p>13 Q. Okay. Have you ever heard of a gentleman</p> <p>14 named Ken Klippen?</p> <p>15 A. Yes.</p> <p>16 Q. Who's Ken Klippen?</p> <p>17 A. I don't know how to describe him.</p> <p>18 Q. Okay. Does he have anything to do with</p> <p>19 the egg industry?</p> <p>20 A. I don't -- again, I don't know how to</p> <p>21 describe that. I don't know what he specifically</p> <p>22 does.</p> <p>23 Q. Have you ever met with Ken Klippen?</p> <p>24 A. I know Ken Klippen.</p> <p>25 Q. Okay. In what circumstance have you met</p>
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<p>1 want to hear it again.</p> <p>2 Q. Okay.</p> <p>3 MR. ARANOFF: Could you read his answer</p> <p>4 back, please?</p> <p>5 COURT REPORTER: "That he was not going</p> <p>6 to allow New Day to have a UEP certified number."</p> <p>7 BY MR. ARANOFF:</p> <p>8 Q. Okay. Was there anything else that he</p> <p>9 threatened you with other than not giving you the</p> <p>10 UEP certified number?</p> <p>11 MR. ONDECK: Objection, assumes facts not</p> <p>12 in evidence.</p> <p>13 BY MR. ARANOFF:</p> <p>14 Q. You can answer.</p> <p>15 A. Not that I'm aware of.</p> <p>16 Q. Okay. And then it says, "Oak Ridge is</p> <p>17 the location you receive the eggs from in Iowa, and</p> <p>18 is the only New Day or Daybreak facility that is</p> <p>19 not transitioning to the UEP animal welfare</p> <p>20 production practices." What did you mean by that?</p> <p>21 A. That all of our -- all of the</p> <p>22 Daybreak/New Day facilities are either at or</p> <p>23 in -- either are at or transitioning to a</p> <p>24 customer-driven animal welfare production practices</p> <p>25 program.</p>	<p>1 him?</p> <p>2 A. I've met him at industry functions.</p> <p>3 Q. Has Mr. Klippen ever approached you about</p> <p>4 joining on to an alternative animal welfare</p> <p>5 program?</p> <p>6 A. He asked us about the process verified</p> <p>7 program, which is a program established by the --</p> <p>8 it's a USDA program. And we did not sign onto it</p> <p>9 and/or support it. He approached us about things.</p> <p>10 We didn't do anything with it.</p> <p>11 Q. Do you know whether Mr. Klippen ever</p> <p>12 attended any UEP meetings?</p> <p>13 A. He probably did, yeah.</p> <p>14 (Exhibit 18 marked for identification.)</p> <p>15 BY MR. ARANOFF:</p> <p>16 Q. Mr. Rehm, I'll show you what's been</p> <p>17 marked as Rehm Exhibit 18 for purposes of</p> <p>18 identification. This is a chain e-mail, two pages</p> <p>19 long, bearing a Confidential legend. And it is</p> <p>20 Bates stamped DAY0002644 to DAY0002645. I'll give</p> <p>21 you a minute to take a look at it.</p> <p>22 Going from the bottom to the top, the</p> <p>23 bottom e-mail is from Ken Klippen to, I presume,</p> <p>24 you, subject Yesterday's Meeting. I assume you're</p> <p>25 William at Daybreaksdot-com; right?</p>

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<p>1 A. Yes.</p> <p>2 Q. Then there's an e-mail on top of that</p> <p>3 from you to Ken Klippen dated November 1, 2006. Do</p> <p>4 you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Take a look at the document, then</p> <p>7 I'll ask you a few questions.</p> <p>8 A. Yes.</p> <p>9 Q. Okay. So let's start with the bottom.</p> <p>10 You see that this is essentially a, looks like a</p> <p>11 letter even though it's in e-mail form, from Ken</p> <p>12 Klippen to you; right?</p> <p>13 A. Yeah.</p> <p>14 Q. Okay. It says, "Dear Bill, I'm sorry you</p> <p>15 missed yesterday's egg industry meeting at the</p> <p>16 Marriott O'Hare hotel. It was a productive</p> <p>17 meeting, many said, as it provided the forum to</p> <p>18 talk about an alternative animal welfare program</p> <p>19 that would not mandate a hundred percent of your</p> <p>20 production to be in compliance.</p> <p>21 A customer-driven program is</p> <p>22 defensible, as retailers are looking for assurances</p> <p>23 of a program that meets their needs, not a program</p> <p>24 requiring your production to be a hundred percent</p> <p>25 under a solitary set of guidelines. After all,</p>	<p>1 Q. Did you ever get any materials for</p> <p>2 consideration from Mr. Klippen to consider in</p> <p>3 deciding whether you wanted to join his alternative</p> <p>4 animal welfare program?</p> <p>5 A. Did not.</p> <p>6 Q. Okay. So aside from this correspondence</p> <p>7 between you and Mr. Klippen, do you recall ever</p> <p>8 having had any other interaction with him with</p> <p>9 respect to his animal welfare program?</p> <p>10 A. I do not recall.</p> <p>11 Q. Do you know whether any other egg</p> <p>12 producing entities ever did join Mr. Klippen's</p> <p>13 alternative animal welfare program?</p> <p>14 A. I do not know.</p> <p>15 Q. Do you know whether Mr. Klippen's</p> <p>16 alternative animal welfare program is in effect</p> <p>17 today? Is it operational?</p> <p>18 A. I do not know.</p> <p>19 Q. Do you know -- withdrawn. Has -- besides</p> <p>20 you, is there anyone at your company, that you're</p> <p>21 aware of, that has had any interaction with</p> <p>22 Mr. Klippen with respect to his alternative animal</p> <p>23 welfare program?</p> <p>24 A. No, there has -- there has not been, to</p> <p>25 the best of my knowledge.</p>
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<p>1 you're selling eggs to your customers, not the</p> <p>2 animal rights organizations who will never be</p> <p>3 satisfied, nor ultimately accept, any caged layer</p> <p>4 production." Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Have I read that accurately?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And do you recall having received</p> <p>9 this?</p> <p>10 A. Don't recall it. But, you know, it's my</p> <p>11 e-mail and I'm -- speaks for itself.</p> <p>12 Q. Okay. And do you agree with this, with</p> <p>13 what Mr. Klippen says here?</p> <p>14 A. No. He was trying to solicit our</p> <p>15 participation. And I, trying to be kind, going</p> <p>16 back to him, thanking him for the invitation. But</p> <p>17 at the end of the day, I was just being that, kind.</p> <p>18 Q. Did you ever join Ken Klippen's</p> <p>19 alternative animal welfare program?</p> <p>20 A. No, I did not.</p> <p>21 Q. Do you have an understanding as you sit</p> <p>22 here today about what the differences, if any,</p> <p>23 there are between Ken Klippen's proposed animal</p> <p>24 welfare program and that of the UEP?</p> <p>25 A. I do not know what they are.</p>	<p>1 Q. Okay. There's a second paragraph of the</p> <p>2 letter from Mr. Klippen to you. Says, "Several in</p> <p>3 attendance at yesterday's meeting said they</p> <p>4 appreciated the balance of opinions in the</p> <p>5 discussions. This contributed to more opinions</p> <p>6 being expressed... something that appears to be</p> <p>7 more difficult to do at other meetings where the</p> <p>8 attendance is very large."</p> <p>9 When it says "several in attendance at</p> <p>10 yesterday's meeting," do you have any idea who</p> <p>11 those people were?</p> <p>12 A. No.</p> <p>13 Q. Have you ever had any discussion with</p> <p>14 anybody else with respect to joining the animal</p> <p>15 welfare program that Mr. Klippen was pushing?</p> <p>16 A. I don't believe so, no.</p> <p>17 Q. Okay. Then the next paragraph says,</p> <p>18 "Yesterday's meeting concluded with the idea of</p> <p>19 moving forward in the investigation of alternatives</p> <p>20 for welfare programs. A budget for such a program</p> <p>21 will be developed and shared with the committee</p> <p>22 established. Following approval, we will press</p> <p>23 forward with the program to be presented to you and</p> <p>24 others interested during the US Poultry and Egg</p> <p>25 Exposition in Atlanta this January. Sincerely, Ken</p>

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<p>1 Klippen." Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. I've read that correctly?</p> <p>4 A. I believe so.</p> <p>5 Q. Did you ever receive a budget for this</p> <p>6 alternative welfare program from Mr. Klippen?</p> <p>7 A. No.</p> <p>8 Q. Do you know as you sit here today whether</p> <p>9 Michael Foods or anybody at Michael Foods had any</p> <p>10 interaction at all with Ken Klippen?</p> <p>11 MR. GREENE: Objection, foundation.</p> <p>12 THE WITNESS: I don't know.</p> <p>13 BY MR. ARANOFF:</p> <p>14 Q. Okay. Did you ever hear of a gentleman</p> <p>15 by the name of Craig Morris?</p> <p>16 A. That name does not sound familiar.</p> <p>17 MR. ARANOFF: Mark this.</p> <p>18 (Exhibit 19 marked for identification.)</p> <p>19 BY MR. ARANOFF:</p> <p>20 Q. Mr. Rehm, I'll show you what's been</p> <p>21 marked as Rehm Exhibit 19 for purposes of</p> <p>22 identification. Again, it's an e-mail chain. It's</p> <p>23 a two-page document labeled Highly Confidential,</p> <p>24 Bates number DAY0005094 through DAY0005095. I'll</p> <p>25 give you a second to look at it and then I'll ask</p>	<p>1 hundred percent compliance. Feel free to contact</p> <p>2 me at any time to help lend support to this program</p> <p>3 for non-UEP certified companies."</p> <p>4 You see that? And then it gives your</p> <p>5 phone number?</p> <p>6 A. Yep.</p> <p>7 Q. Okay. Do you have any recollection of</p> <p>8 having written this?</p> <p>9 A. No.</p> <p>10 Q. Okay. Is the USDA processed verified</p> <p>11 program the alternative animal welfare program that</p> <p>12 was sponsored by Ken Klippen?</p> <p>13 A. I don't know.</p> <p>14 Q. I didn't hear you.</p> <p>15 A. I do not know.</p> <p>16 Q. Okay. Then if you look up, you'll see</p> <p>17 that there's an e-mail from Craig Morris to both</p> <p>18 Lloyd Day and Kenneth Clayton; you see that?</p> <p>19 A. Uh-huh.</p> <p>20 Q. Do you know who Lloyd Day is?</p> <p>21 A. I don't know who either of those</p> <p>22 gentlemen are.</p> <p>23 Q. And you see the e-mail? It's forwarded,</p> <p>24 topic is UEP, subject to UEP. It says, "Rough day</p> <p>25 today with Gene and McCloud at UEP's animal welfare</p>
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<p>1 you just a couple of questions. All set?</p> <p>2 A. I think.</p> <p>3 Q. Okay. You sure? You sounded a little</p> <p>4 tentative. I don't want to rush you.</p> <p>5 A. Okay.</p> <p>6 Q. Okay. Again, this is an e-mail chain, so</p> <p>7 we'll start from the bottom and go up. You'll see</p> <p>8 that the last e-mail here is from -- purportedly</p> <p>9 from you to Craig Morris; right?</p> <p>10 A. Uh-huh.</p> <p>11 Q. Does this refresh your recollection at</p> <p>12 all as to who Craig Morris is?</p> <p>13 A. Not a clue.</p> <p>14 Q. Do you know what the abbreviation A like</p> <p>15 Adam, M like Mary, S like Sam is next to</p> <p>16 Mr. Morris' name?</p> <p>17 A. It's -- my interpretation would be that</p> <p>18 it's a division of USDA.</p> <p>19 Q. Okay. And this is an e-mail from you.</p> <p>20 And it says, "Craig, thank you again for supporting</p> <p>21 the USDA, the process verify program. We feel this</p> <p>22 is a great option for those companies that are not</p> <p>23 UEP certified companies yet need to provide</p> <p>24 customer verification of their customer-driven</p> <p>25 animal welfare program that does not require a</p>	<p>1 meeting.' Do you know who McCloud is?</p> <p>2 A. Mike McCloud at McCloud, Watkins in DC, I</p> <p>3 believe it is.</p> <p>4 Q. What is McCloud, Watkins, do you know?</p> <p>5 A. They work with the UEP, I believe, on</p> <p>6 lobbying efforts.</p> <p>7 Q. So it's a lobbying firm, to the best of</p> <p>8 your knowledge?</p> <p>9 A. I don't know.</p> <p>10 Q. Okay. But they work on lobbying efforts?</p> <p>11 A. I believe. I'm not positive.</p> <p>12 Q. Okay. Continuing on, "They basically</p> <p>13 told the group that we are going to destroy the egg</p> <p>14 industry by working with Klippen and agreed to send</p> <p>15 Lloyd a nasty letter outlining their concerns.</p> <p>16 Several came up to me after the meeting to commend</p> <p>17 me on keeping professional during the exchange.</p> <p>18 The below is from a large breaker." You see that?</p> <p>19 A. Uh-huh.</p> <p>20 Q. I've read that correctly?</p> <p>21 A. Yep.</p> <p>22 Q. Okay. Do you know what he's referencing</p> <p>23 when he says "the group" in the second sentence?</p> <p>24 "They basically told the group."</p> <p>25 A. Don't know.</p>

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<p>1 Q. Okay.</p> <p>2 A. I mean, I can cut through some of this</p> <p>3 for you if you want. I mean at the end of the day,</p> <p>4 I saw the process verified program through USDA as</p> <p>5 a possible alternative for us to verify what we're</p> <p>6 doing for our customers. And I passed it up the</p> <p>7 channel to Pat.</p> <p>8 Q. Okay. Good.</p> <p>9 THE WITNESS: How far are we on the tape?</p> <p>10 Is that -- if we're close to an end on the tape</p> <p>11 or --</p> <p>12 MR. ARANOFF: I think that I am pretty</p> <p>13 much done. I may just take -- why don't we take a</p> <p>14 break, I can do --</p> <p>15 THE WITNESS: Yeah, thanks.</p> <p>16 THE VIDEOGRAPHER: We're going off the</p> <p>17 record at 3:10 p.m.</p> <p>18 (Break taken.)</p> <p>19 THE VIDEOGRAPHER: We're back on the</p> <p>20 record at 3:16.</p> <p>21 MR. ARANOFF: Okay. And this is Ron</p> <p>22 Aranoff. I've completed my direct examination for</p> <p>23 the moment.</p> <p>24 E X A M I N A T I O N</p> <p>25 BY MR. BJORK:</p>	<p>1 from Day Lay?</p> <p>2 Q. Correct. Did Day Lay continue -- you</p> <p>3 said before that Day Lay sold graded eggs; correct?</p> <p>4 A. Yes.</p> <p>5 Q. How long after the acquisition did Day</p> <p>6 Lay continue to sell graded eggs?</p> <p>7 A. Okay. I just want to make sure I have it</p> <p>8 right. I think they were -- I believe that Day Lay</p> <p>9 was out of business at that point.</p> <p>10 Q. Okay.</p> <p>11 A. I believe that was basically the wrap-up</p> <p>12 of their business at that point in time.</p> <p>13 Q. Okay. When you say "wrap up," I mean,</p> <p>14 are we talking that they continued to sell graded</p> <p>15 eggs for six months after the acquisition, a year?</p> <p>16 A. They were out of business as it pertained</p> <p>17 to the production and processing and sale of eggs.</p> <p>18 Q. Immediately -- well, when you took it</p> <p>19 over, did the facilities that previously had been</p> <p>20 run by Day Lay, did you continue to operate those</p> <p>21 facilities, "you" being New Day Farms?</p> <p>22 A. That's why we acquired them, was to</p> <p>23 create a -- transition them over to Daybreak's</p> <p>24 business model, which is to convert it from the</p> <p>25 shell market into the liquid market so that we</p>
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<p>1 Q. Mr. Rehm, my name is John Bjork. We met</p> <p>2 earlier. I represent direct action plaintiffs,</p> <p>3 Publix and SuperValu. I'm going to ask you a few</p> <p>4 follow-up questions based on some of Ron's</p> <p>5 questioning. I'll do my best to make it quick, but</p> <p>6 I might have to jump around a little bit. So bear</p> <p>7 with me.</p> <p>8 THE WITNESS: Can I make a request? Can</p> <p>9 you and Ron change?</p> <p>10 MR. BJORK: Yeah, absolutely.</p> <p>11 THE WITNESS: For me, it's easier to hear</p> <p>12 you than down there. Thank you, gentlemen.</p> <p>13 BY MR. BJORK:</p> <p>14 Q. Sure. So just to start, Mr. Rehm, I</p> <p>15 wanted to touch quickly on some of the questioning</p> <p>16 relating to New Day Farms.</p> <p>17 A. Okay.</p> <p>18 Q. How long after New Day Farms acquired Day</p> <p>19 Lay did Day Lay continue to sell graded eggs?</p> <p>20 A. Let me try to correct your question --</p> <p>21 Q. Sure.</p> <p>22 A. -- make sure we have the right players,</p> <p>23 'cause New Day, Day Lay, get back and forth.</p> <p>24 Are you trying to ask me how long after New</p> <p>25 Day acquired the assets -- a portion of the assets</p>	<p>1 could deliver unpasteurized, raw, liquid egg.</p> <p>2 Q. So New Day Farms never sold graded eggs?</p> <p>3 A. New Day Farms --</p> <p>4 MR. ONDECK: Objection, form of the</p> <p>5 question.</p> <p>6 BY MR. BJORK:</p> <p>7 Q. Go ahead.</p> <p>8 A. New Day Farms transitioned from the day</p> <p>9 we acquired it to the day we were able to make the</p> <p>10 transition in the plants. Because it takes a</p> <p>11 considerable amount of remodeling inside the</p> <p>12 processing plant to convert it from a graded</p> <p>13 facility to a breaking facility. So we could</p> <p>14 actually take the egg and separate it from the</p> <p>15 shell and deliver raw, unpasteurized products for</p> <p>16 our customers' utilization.</p> <p>17 Q. When you say there was a transition. So</p> <p>18 there was never any continuation of the sale of</p> <p>19 graded eggs after the acquisition to New Day Farms?</p> <p>20 A. There was a transitional period where</p> <p>21 some graded eggs were sold, yes.</p> <p>22 Q. And how long was that transitional</p> <p>23 period?</p> <p>24 A. I don't know in terms of duration for</p> <p>25 sure.</p>

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<p>1 Q. Okay. If you could approximate?</p> <p>2 A. Under a year.</p> <p>3 Q. Under a year?</p> <p>4 A. Six months, you know.</p> <p>5 Q. Okay.</p> <p>6 A. I was -- like I said, it's a complex and</p> <p>7 complicated and difficult process to transition</p> <p>8 from shell/egg grading operation to an inline</p> <p>9 breaking operation. The Food Safety regulations,</p> <p>10 the food integrity process, the building material</p> <p>11 properties, are significantly different.</p> <p>12 Q. Okay. Understood. Now, during that</p> <p>13 transition you approximated six months or so, or</p> <p>14 less than a year, did you continue -- at those</p> <p>15 facilities did you continue to adhere to the UEP</p> <p>16 guidelines?</p> <p>17 MR. ONDECK: Objection to the form of the</p> <p>18 question. Also objection, that assumes facts not</p> <p>19 in evidence.</p> <p>20 THE WITNESS: Yes and no.</p> <p>21 BY MR. BJORK:</p> <p>22 Q. Okay. Well, let's start with the -- what</p> <p>23 do you mean by that?</p> <p>24 A. Some of the product was intended for</p> <p>25 Cargill Kitchen Solutions. And Cargill Kitchen</p>	<p>1 other one we adjusted it to the customer density</p> <p>2 based on what they were looking for there.</p> <p>3 Eventually. Not right away, but eventually.</p> <p>4 Q. What way was it adjusted?</p> <p>5 A. I think we probably added a hen or two</p> <p>6 per cage. I'm not sure how much. It wasn't a huge</p> <p>7 adjustment. Slight.</p> <p>8 Q. Okay. I want to talk a little bit about,</p> <p>9 circle back to the committee memberships within the</p> <p>10 UEP. I know you listed the names of Loren Asche,</p> <p>11 yourself, your brother Tony, and Pat Stonger as</p> <p>12 being involved in various UEP committees. That's</p> <p>13 correct; right?</p> <p>14 A. Yes, that's correct. I think that's</p> <p>15 correct.</p> <p>16 Q. Were there any other Daybreak employees</p> <p>17 that were on -- let me strike that. Were any other</p> <p>18 Daybreak employees on any other UEP committees?</p> <p>19 A. To the best of my knowledge, no.</p> <p>20 Q. Okay. Any other Daybreak employees have</p> <p>21 any other involvement generally with the UEP?</p> <p>22 A. They may have attended meetings at times,</p> <p>23 yeah.</p> <p>24 Q. Who would those employees be?</p> <p>25 A. Oh, man, I don't know.</p>
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<p>1 Solutions, part of their production protocol was</p> <p>2 that we adhere to production practices that were</p> <p>3 similar to the United Egg Producers' program for</p> <p>4 production. And so as long as they were there</p> <p>5 already, we took what they did and enhanced it to</p> <p>6 our program that fully complied. And the other</p> <p>7 farm, they requested an alternative program that</p> <p>8 did not require utilization of the UEP</p> <p>9 production-type practices.</p> <p>10 Q. Okay did you adjust the cage space -- did</p> <p>11 you reduce the cage space at all after the</p> <p>12 acquisition at that -- those facilities?</p> <p>13 MR. ONDECK: Objection to the form of the</p> <p>14 question.</p> <p>15 THE WITNESS: "Reduce" meaning what?</p> <p>16 BY MR. BJORK:</p> <p>17 Q. Did you keep the same cage density? Did</p> <p>18 you continue that?</p> <p>19 A. Yes and no.</p> <p>20 Q. Okay.</p> <p>21 A. Again, depending upon -- there were two</p> <p>22 farms.</p> <p>23 Q. Yep.</p> <p>24 A. Depending upon which farm you're talking</p> <p>25 about, one, we maintained the same density, the</p>	<p>1 Q. Other than the four people.</p> <p>2 A. I mean, I don't know.</p> <p>3 Q. Okay.</p> <p>4 A. I mean, they had meetings in Iowa. So</p> <p>5 our general managers in Iowa might have been there.</p> <p>6 Had meetings in Ohio, our general manager, he may</p> <p>7 have gone to those meetings, you know. You know,</p> <p>8 some of them at times would go to Atlanta for the</p> <p>9 international poultry exposition. And in</p> <p>10 conjunction with that, UEP has a meeting there they</p> <p>11 may have attended some of those meetings as, you</p> <p>12 know, a spectator to the process.</p> <p>13 Q. Understood. As a member of the board of</p> <p>14 directors, on average, how many meetings would you</p> <p>15 attend a year?</p> <p>16 MR. ONDECK: Objection, assumes facts not</p> <p>17 in evidence.</p> <p>18 BY MR. BJORK:</p> <p>19 Q. Did you attend meetings as a member of</p> <p>20 the UEP board of directors?</p> <p>21 A. Attended UEP board meetings, and I am on</p> <p>22 the board, sir.</p> <p>23 Q. Okay. And how -- my earlier question, on</p> <p>24 average, how many would you say you attended --</p> <p>25 from the period of 1999 to 2008, on average, how</p>

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<p>1 many UEP board meetings would you say you attended?</p> <p>2 A. I believe UEP has three board meetings a</p> <p>3 year. I couldn't tell you how many I would attend</p> <p>4 on a yearly basis. Sometimes it was all three,</p> <p>5 sometimes it was one, two. It just -- it all</p> <p>6 depended. I didn't even -- there were times I</p> <p>7 couldn't even make the annual meeting.</p> <p>8 Q. Okay.</p> <p>9 A. So --</p> <p>10 Q. Were you encouraged by anyone at the UEP</p> <p>11 to attend?</p> <p>12 A. Family comes before business.</p> <p>13 Q. Uh-huh.</p> <p>14 A. And I have sons that are -- participate</p> <p>15 in extracurricular activities. And when they were</p> <p>16 seniors in high school and they conflicted</p> <p>17 with -- their sporting activities conflicted with</p> <p>18 UEP meetings, I would miss UEP meetings and attend</p> <p>19 their activities.</p> <p>20 Q. Okay. Did you have any involvement in</p> <p>21 the UEP animal welfare committee?</p> <p>22 A. No.</p> <p>23 Q. Did anyone at Daybreak have any</p> <p>24 involvement in UEP animal welfare committee?</p> <p>25 MR. ONDECK: Objection, ambiguous time</p>	<p>1 A. Okay. Go ahead.</p> <p>2 Q. So this looks to be an e-mail from --</p> <p>3 from you to Pat at Daybreak Foods?</p> <p>4 A. Yes.</p> <p>5 Q. And you're asking about something with</p> <p>6 respect to being on a committee to shape a new rule</p> <p>7 for the UEP animal welfare. Can you explain what</p> <p>8 this message pertained to?</p> <p>9 MR. ONDECK: Objection, statement</p> <p>10 contained within the question.</p> <p>11 BY MR. BJORK:</p> <p>12 Q. Go ahead. What was your understanding of</p> <p>13 your message that you sent to Pat at Daybreak</p> <p>14 Foods?</p> <p>15 A. I believe that what I'm asking is we had</p> <p>16 a farm that comprised -- we had a farm comprised of</p> <p>17 six layer barns and an inline breaking operation.</p> <p>18 Half of those barns, we were requested by our</p> <p>19 customer to follow BK, Burger King's, protocol,</p> <p>20 while the other three we weren't required to follow</p> <p>21 any specific customer protocol at that time.</p> <p>22 And what I was asking Pat for was what</p> <p>23 are the forms, processes, and everything that we're</p> <p>24 doing at that farm so that we can ensure the BK</p> <p>25 eggs end up in the BK liquid and the non-BK eggs</p>
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<p>1 period.</p> <p>2 BY MR. BJORK:</p> <p>3 Q. Go ahead.</p> <p>4 A. No.</p> <p>5 Q. Ever, to your recollection?</p> <p>6 A. Nobody from Daybreak was on the UEP</p> <p>7 animal welfare committee.</p> <p>8 Q. That wasn't my question exactly. Did it</p> <p>9 have any involvement in the UEP animal welfare</p> <p>10 committee?</p> <p>11 A. Well, would and could sit in as</p> <p>12 spectators to the process of the committee.</p> <p>13 Q. Okay. Mr. Rehm, I'm going to show you an</p> <p>14 exhibit that I'll mark as No. 20. And I apologize,</p> <p>15 I only have three extra copies of this.</p> <p>16 (Exhibit 20 marked for identification.)</p> <p>17 BY MR. BJORK:</p> <p>18 Q. Take a look at it. What I'm going to be</p> <p>19 asking about, for your reference, is the top of the</p> <p>20 page, the first message. The exhibit is --</p> <p>21 MR. DAVIS: Can we get the Bates number?</p> <p>22 MR. BJORK: Yes. It's DAY0002648.</p> <p>23 THE WITNESS: Uh-huh.</p> <p>24 BY MR. BJORK:</p> <p>25 Q. Just let me know when you're ready.</p>	<p>1 end up in the non-BK liquid beyond a shadow of a</p> <p>2 doubt. Because this committee, I believe, is the</p> <p>3 committee that met with people in favor of the one</p> <p>4 hundred percent rule and people not in favor of the</p> <p>5 one hundred percent rule.</p> <p>6 Because this protocol that we used</p> <p>7 showed that you could do -- you could produce eggs</p> <p>8 on a farm and segregate the eggs and beyond a</p> <p>9 shadow of a doubt know what eggs are -- ended up</p> <p>10 where.</p> <p>11 Q. And when it says that the last sentence</p> <p>12 I'm on a committee to shape a new rule for UEP</p> <p>13 animal welfare, what committee are you referring</p> <p>14 to?</p> <p>15 A. I'm talking about the document, I</p> <p>16 believe, where a group of producers that were in</p> <p>17 favor of the hundred percent rule met with a group</p> <p>18 of producers that were not in favor of the hundred</p> <p>19 percent rule. And I wanted to know -- make sure I</p> <p>20 understood what that protocol was so if I needed to</p> <p>21 and had an opportunity to, I could bring that forth</p> <p>22 to show that it can be done.</p> <p>23 Q. Okay. So this wasn't referring to the</p> <p>24 animal welfare committee?</p> <p>25 A. No, no.</p>

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<p>1 Q. Okay. And the recipient of this e-mail</p> <p>2 is Pat -- who is it?</p> <p>3 A. Pat Stonger.</p> <p>4 Q. Pat Stonger. Okay. Do you remember</p> <p>5 there being a committee called the long-range</p> <p>6 planning committee at the UEP?</p> <p>7 A. I believe there was one, yeah, or --</p> <p>8 Q. What was your understanding of that</p> <p>9 committee?</p> <p>10 A. I don't know.</p> <p>11 Q. You don't know what they did?</p> <p>12 A. I don't know what they did.</p> <p>13 Q. Okay. Do you remember the UEP having a</p> <p>14 committee called the marketing committee?</p> <p>15 A. Shell egg price discovery committee, is</p> <p>16 that what you're talking about?</p> <p>17 Q. No, I think it's separate from that.</p> <p>18 A. I don't know what it is then.</p> <p>19 Q. Okay. Before, we talked a little bit</p> <p>20 about -- actually, we talked extensively about some</p> <p>21 of the UEP's instructions with regard to chick</p> <p>22 hatch reduction, flock disposals, and the molting</p> <p>23 practices of their members.</p> <p>24 Is it your understanding that at times</p> <p>25 throughout the relevant period, 1999 to 2008, that</p>	<p>1 A. Just what I said. It means to balance</p> <p>2 them, the supply and demand economics.</p> <p>3 Q. Okay. And was the purpose of that to</p> <p>4 increase the price of eggs?</p> <p>5 MR. ONDECK: Objection.</p> <p>6 MR. DAVIS: Objection.</p> <p>7 MR. ONDECK: Calls for speculation.</p> <p>8 THE WITNESS: To better balance the</p> <p>9 supply and demand economics of the industry.</p> <p>10 BY MR. BJORK:</p> <p>11 Q. And does -- by "better balance the supply</p> <p>12 and demand," do you mean that the price of eggs</p> <p>13 would go up as a result of better balancing supply</p> <p>14 and demand?</p> <p>15 MR. ONDECK: Objection, asked and</p> <p>16 answered.</p> <p>17 THE WITNESS: I don't believe that the</p> <p>18 industry organization UEP would intentionally</p> <p>19 suggest something that they anticipated would be</p> <p>20 detrimental to its members.</p> <p>21 BY MR. BJORK:</p> <p>22 Q. Okay. But that wasn't -- my question</p> <p>23 was --</p> <p>24 A. Well, what do you think it means? I</p> <p>25 mean, I answered your question.</p>
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<p>1 the UEP gave instructions to UEP members to reduce</p> <p>2 chick hatch for the explicit purpose of reducing</p> <p>3 supply?</p> <p>4 MR. DAVIS: This is Evan Davis. I object</p> <p>5 to the form of the question.</p> <p>6 MR. ONDECK: Yeah, objection, complex,</p> <p>7 ambiguous as to "instructions."</p> <p>8 MR. BJORK:</p> <p>9 Q. Go ahead.</p> <p>10 A. I'd say, as testified earlier today,</p> <p>11 Daybreak did not participate in any --</p> <p>12 Q. That's not my question.</p> <p>13 MR. ONDECK: Objection. Please let the</p> <p>14 witness finish answering.</p> <p>15 THE WITNESS: And the purpose of the</p> <p>16 flock reduction, you know, I would imagine it was</p> <p>17 because it was trying to better balance the supply</p> <p>18 and demand economics.</p> <p>19 BY MR. BJORK:</p> <p>20 Q. In other words, reduce the supply?</p> <p>21 MR. ONDECK: Objection.</p> <p>22 THE WITNESS: That's not what I said.</p> <p>23 Better balance the supply and demand economics.</p> <p>24 BY MR. BJORK:</p> <p>25 Q. What does that mean?</p>	<p>1 Q. What do I think what means?</p> <p>2 A. I answered your question, sir.</p> <p>3 Q. I don't believe you did. My question is</p> <p>4 this. Is it your understanding that the purpose of</p> <p>5 the UEP's directives with respect to chick hatch</p> <p>6 reductions was to increase the supply of eggs or</p> <p>7 egg products?</p> <p>8 MR. ONDECK: Objection, confusing.</p> <p>9 MR. DAVIS: Objection, lacks foundation.</p> <p>10 THE WITNESS: Better balance the supply</p> <p>11 and demand economics in the industry.</p> <p>12 BY MR. BJORK:</p> <p>13 Q. Okay. It's just a yes or no question.</p> <p>14 A. Yeah, I hear you, and I answered your</p> <p>15 question.</p> <p>16 MR. BJORK: Can you read back the</p> <p>17 question? Just a yes or no answer is all I'm</p> <p>18 looking for.</p> <p>19 THE WITNESS: I'm not going to give a yes</p> <p>20 or no answer to a question I don't believe is a yes</p> <p>21 or no question.</p> <p>22 COURT REPORTER: "My question is this.</p> <p>23 Is it your understanding that the purpose of the</p> <p>24 UEP's directives with respect to chick hatch</p> <p>25 reductions was to increase the supply of eggs or</p>

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<p>1 egg products?"</p> <p>2 MR. DAVIS: This is Evan Davis. I object</p> <p>3 to the phrasing of the question of UEP directives.</p> <p>4 I also object to the insinuation that the witness</p> <p>5 has any foundation to testify as to UEP's purpose.</p> <p>6 MR. ONDECK: I object, asked and answered</p> <p>7 several times.</p> <p>8 BY MR. BJORK:</p> <p>9 Q. Mr. Rehm, would you agree -- do you agree</p> <p>10 that there were directives from the UEP to reduce</p> <p>11 chick hatch at various times throughout 1999 to</p> <p>12 2008?</p> <p>13 A. No.</p> <p>14 Q. You do not?</p> <p>15 A. No. You call them directives; they were</p> <p>16 recommendations.</p> <p>17 Q. Okay. Were you -- do you know how those</p> <p>18 recommendations came to be?</p> <p>19 A. Not specifically.</p> <p>20 Q. Okay. Did you ever have any involvement</p> <p>21 in any of those recommendations?</p> <p>22 A. No.</p> <p>23 Q. Okay. Same question with -- or same line</p> <p>24 of questions with regard to the flock disposals.</p> <p>25 Do you know how -- the recommendations with regard</p>	<p>1 Q. Which complexes were those?</p> <p>2 A. Mad River, Creekwood, and LMC, and our</p> <p>3 contracts in -- contract production in Minnesota.</p> <p>4 Q. Okay. And did the other five facilities</p> <p>5 with regard to cage space, they would not have</p> <p>6 satisfied the UEP guidelines?</p> <p>7 A. That's not right.</p> <p>8 Q. Is that what you're saying?</p> <p>9 A. No.</p> <p>10 Q. Well, that's my question. Okay. With</p> <p>11 regard to those other five facilities, did they</p> <p>12 meet the UEP guidelines during the period 1999 to</p> <p>13 2008?</p> <p>14 MR. ONDECK: Objection.</p> <p>15 MR. DAVIS: I also object.</p> <p>16 THE WITNESS: Somewhat.</p> <p>17 MR. DAVIS: The question's misleading and</p> <p>18 it insinuates there were UEP guidelines beginning</p> <p>19 in 1999.</p> <p>20 THE WITNESS: Some exceeded the 67 that</p> <p>21 is in the UEP guidelines.</p> <p>22 BY MR. BJORK:</p> <p>23 Q. Did any of the eight facilities not meet</p> <p>24 or exceed the UEP guidelines?</p> <p>25 A. There were two farms that had something</p>
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<p>1 to flock disposals?</p> <p>2 A. Same answer.</p> <p>3 Q. And neither you nor anyone at Daybreak</p> <p>4 participated in any of those recommendations?</p> <p>5 A. That's correct.</p> <p>6 Q. Okay. Bear with me just a second. How</p> <p>7 many of the facilities that Daybreak's -- Well,</p> <p>8 strike that. During the period from 1999 to 2008,</p> <p>9 how many of Daybreak's facilities met the UEP</p> <p>10 guidelines with regard to cage space?</p> <p>11 MR. ONDECK: Objection, assumes a fact</p> <p>12 not in evidence.</p> <p>13 THE WITNESS: Daybreak follows the</p> <p>14 guidelines prescribed by our customers to humanely</p> <p>15 produce eggs.</p> <p>16 BY MR. BJORK:</p> <p>17 Q. Uh-huh.</p> <p>18 A. And some of those would be -- some of</p> <p>19 those would prescribe cage density that would be</p> <p>20 comparable to the UEP, and others would not. Of</p> <p>21 those that matched the UEP cage density, just UEP</p> <p>22 cage density.</p> <p>23 Q. Uh-huh.</p> <p>24 A. Because there could be others that had</p> <p>25 more, had provided greater space. Three complexes</p>	<p>1 other than 67, that was not greater than 67.</p> <p>2 Q. Okay. And what were -- what two</p> <p>3 facilities were those?</p> <p>4 A. Farm three in Ohio, and Oak Ridge.</p> <p>5 Q. Okay. Mr. Rehm, were you familiar with</p> <p>6 the UEP's ban on what was called commingling? Do</p> <p>7 you have a recollection of that?</p> <p>8 MR. ONDECK: Objection. Sorry. Assumes</p> <p>9 a fact not in evidence.</p> <p>10 THE WITNESS: I don't know what you're</p> <p>11 talking about.</p> <p>12 BY MR. BJORK:</p> <p>13 Q. You don't remember that? I'll go back to</p> <p>14 that in a second. Did the UEP have a ban on</p> <p>15 backfilling?</p> <p>16 MR. DAVIS: Object to the form of the</p> <p>17 question.</p> <p>18 BY MR. BJORK:</p> <p>19 Q. Go ahead.</p> <p>20 A. I'm not sure if they did initially. I</p> <p>21 believe eventually they added a portion in their</p> <p>22 program about backfilling.</p> <p>23 Q. When you say they added a portion, do you</p> <p>24 mean that they -- what they added was a ban on</p> <p>25 backfilling?</p>

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<p>1 A. I'm not sure if I recall specifically.</p> <p>2 We're not a UEP certified company.</p> <p>3 Q. So you don't recall there being any sort</p> <p>4 of required ban, is what you're saying?</p> <p>5 MR. ONDECK: Objection, asked and</p> <p>6 answered and no foundation. He stated he wasn't</p> <p>7 certified.</p> <p>8 BY MR. BJORK:</p> <p>9 Q. Do you believe that a -- if there was a</p> <p>10 ban on backfilling, that it would have an impact on</p> <p>11 the supply?</p> <p>12 MR. ONDECK: Objection, speculation.</p> <p>13 MR. DAVIS: Objection, lacks foundation.</p> <p>14 BY MR. BJORK:</p> <p>15 Q. Go ahead.</p> <p>16 A. Not necessarily.</p> <p>17 Q. Why is that?</p> <p>18 A. I can't tell you what the livability of</p> <p>19 any particular flock's going to be, let alone the</p> <p>20 livability of a nashus (phonetic) flock.</p> <p>21 Q. Does Daybreak backfill?</p> <p>22 A. Under certain circumstances, yes.</p> <p>23 Q. Is that -- is backfilling done on a</p> <p>24 facility-by-facility basis?</p> <p>25 A. It's done on a case-by-case basis.</p>	<p>1 THE WITNESS: We're not a UEP certified</p> <p>2 company, so I don't know exactly what that audit</p> <p>3 program says.</p> <p>4 BY MR. BJORK:</p> <p>5 Q. So you don't have any knowledge of that?</p> <p>6 A. I have no factual knowledge to tell you</p> <p>7 definitively one way or the other.</p> <p>8 Q. Do you recall any discussions about there</p> <p>9 being automatic failures of audits as a result of</p> <p>10 cage space?</p> <p>11 A. No.</p> <p>12 Q. Same question with regard to backfilling,</p> <p>13 any knowledge of that?</p> <p>14 A. Nope.</p> <p>15 Q. Were you ever told by anyone at UEP, or</p> <p>16 any members of the UEP, to keep your discussions</p> <p>17 with regard to the UEP program private or</p> <p>18 confidential?</p> <p>19 A. No.</p> <p>20 Q. Same question with regard to what we</p> <p>21 talked about earlier, the hatch reductions, the</p> <p>22 flock disposals, the enhanced molting. Were there</p> <p>23 ever any discussions within UEP about keeping those</p> <p>24 sorts of decisions or recommendations confidential?</p> <p>25 A. No. UEP held itself out as a</p>
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<p>1 Q. Okay. Are you aware or do you have any</p> <p>2 knowledge about the UEP's auditing processes?</p> <p>3 A. Minimal.</p> <p>4 MR. ONDECK: Objection. Please let me</p> <p>5 object.</p> <p>6 THE WITNESS: I'm sorry.</p> <p>7 MR. ONDECK: Lack of foundation.</p> <p>8 THE WITNESS: Minimal.</p> <p>9 BY MR. BJORK:</p> <p>10 Q. Minimal?</p> <p>11 A. We're not a UEP certified company, so my</p> <p>12 knowledge is of things I hear at the meetings.</p> <p>13 Q. Are you aware that there -- strike that.</p> <p>14 Do you know that the UEP has an automatic failure</p> <p>15 of an audit if a UEP member fails to meet the cage</p> <p>16 space requirements of the UEP certified program?</p> <p>17 MR. ONDECK: Objection, assumes facts not</p> <p>18 in evidence about automatic failures or not</p> <p>19 automatic failures, and lack of foundation. We are</p> <p>20 going to have a continuing objection, lack of</p> <p>21 foundation, to anything that he gets asked about</p> <p>22 purposes of the UEP program. He's stated no</p> <p>23 foundation --</p> <p>24 MR. BJORK: Do you want to make a</p> <p>25 standing objection?</p>	<p>1 Capper-Volstead Cooperative and, as such, we felt</p> <p>2 it was proper and the right -- we were in the right</p> <p>3 to have those discussions.</p> <p>4 Q. Okay. Did you tell your -- back up.</p> <p>5 Strike that. Did Daybreak ever inform any of its</p> <p>6 customers that these sort of actions, "actions"</p> <p>7 being reduced chick hatch, flock disposals, induced</p> <p>8 or moving up molding schedules, did you ever tell</p> <p>9 your customers that these things were going on?</p> <p>10 MR. ONDECK: Objection. Objections all</p> <p>11 over the place. Objection, to tell their customers</p> <p>12 that they did a thing that he already testified</p> <p>13 that he didn't do and he said has no foundation.</p> <p>14 MR. BJORK: Understood.</p> <p>15 MR. GREENE: Objection, confusing.</p> <p>16 THE WITNESS: Could you restate the</p> <p>17 question for me, please?</p> <p>18 BY MR. BJORK:</p> <p>19 Q. Sure. Did Daybreak ever inform any of</p> <p>20 its customers that the UEP was making</p> <p>21 recommendations with regard to chick hatch</p> <p>22 reductions and flock disposals?</p> <p>23 A. No.</p> <p>24 Q. Making recommendations to its members?</p> <p>25 A. No, because Daybreak works on a long-term</p>

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<p>1 contractual basis with its customers to supply a</p> <p>2 consistent amount of raw, liquid, unpasteurized</p> <p>3 product to them on a daily, weekly, monthly basis.</p> <p>4 So whether that -- that was happening or not</p> <p>5 happening, it did not have an effect on the</p> <p>6 relationship between our customers and Daybreak,</p> <p>7 because we provide that product on a contractual,</p> <p>8 long-term basis, consistent week to week, month to</p> <p>9 month, year to year, quarter to quarter, take your</p> <p>10 pick.</p> <p>11 Q. Do you know if the United Voices</p> <p>12 pub -- strike that. You're familiar with the</p> <p>13 United Voices publication? We saw it as an exhibit</p> <p>14 earlier today; correct?</p> <p>15 A. Yes.</p> <p>16 Q. Do you know if that publication was</p> <p>17 circulated to anyone outside of the UEP?</p> <p>18 A. Do not know.</p> <p>19 Q. Mr. Rehm, I'm going to read you a list of</p> <p>20 plaintiffs that are in the case that are other</p> <p>21 direct action plaintiffs. And I'll do it one by</p> <p>22 one. And I'd just like you to tell me if you've</p> <p>23 had any business contacts with any of these</p> <p>24 entities from the period 1999 to 2008. Just a</p> <p>25 simple yes or no. And I'll read these -- these</p>	<p>1 Q. Associated Wholesale Grocers, Inc.?</p> <p>2 A. No.</p> <p>3 Q. No. Okay. Konopko, Inc.?</p> <p>4 A. I'm sorry, Konopko, Inc.?</p> <p>5 Q. Konopko, Inc.</p> <p>6 A. No.</p> <p>7 Q. Four B Corporation?</p> <p>8 A. No.</p> <p>9 Q. General Mills?</p> <p>10 A. No.</p> <p>11 Q. Giant Eagle, Inc.?</p> <p>12 A. No.</p> <p>13 Q. Great Atlantic Pacific Tea Company?</p> <p>14 A. No.</p> <p>15 Q. HE Butt Grocery Company?</p> <p>16 A. No.</p> <p>17 Q. Hivey, Inc.?</p> <p>18 A. No.</p> <p>19 Q. Kellogg Company?</p> <p>20 A. No.</p> <p>21 Q. Kraft Foods?</p> <p>22 A. No.</p> <p>23 Q. Kroger Company?</p> <p>24 A. No.</p> <p>25 Q. Meyer, Inc. -- strike that. Mid Am Food</p>
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<p>1 entities one by one.</p> <p>2 A. Can you define "business contacts?"</p> <p>3 Q. Well, what do you -- what do you</p> <p>4 interpret -- what do you define as business</p> <p>5 contact?</p> <p>6 A. You're asking the question, so what do</p> <p>7 you mean?</p> <p>8 MR. ONDECK: At a break, I'm going to say</p> <p>9 objection, ambiguous.</p> <p>10 BY MR. BJORK:</p> <p>11 Q. Let me broaden it out. I'm just going to</p> <p>12 say: Have you had any contact with these entities</p> <p>13 as the president of Daybreak Foods?</p> <p>14 MR. ONDECK: Objection. Including, like,</p> <p>15 eating their products?</p> <p>16 THE WITNESS: Or being at the same</p> <p>17 meeting?</p> <p>18 BY MR. BJORK:</p> <p>19 Q. Correct. I'm going to leave it as</p> <p>20 business contact. If you don't understand -- if</p> <p>21 you don't understand --</p> <p>22 A. Go ahead and ask your one by one</p> <p>23 question.</p> <p>24 Q. Albertson's, LLC?</p> <p>25 A. No.</p>	<p>1 Enterprises?</p> <p>2 A. No.</p> <p>3 Q. Nestle USA?</p> <p>4 A. No.</p> <p>5 Q. Publix Supermarkets?</p> <p>6 A. No.</p> <p>7 Q. Roundy's Supermarkets?</p> <p>8 A. No.</p> <p>9 Q. Safeway, Inc.?</p> <p>10 A. No.</p> <p>11 Q. SuperValu, Inc.?</p> <p>12 A. No.</p> <p>13 Q. Walgreen Company?</p> <p>14 A. No.</p> <p>15 Q. Winn Dixie?</p> <p>16 A. No.</p> <p>17 Q. Ask you a few questions, Mr. Rehm, about</p> <p>18 the transactional data that Daybreak produced in</p> <p>19 the case. And I'll show you the exhibit for that.</p> <p>20 MR. ONDECK: I'll just note that in our</p> <p>21 objections to the 30(b)(6) notice, we stated we're</p> <p>22 not going to provide him as a corporate designee</p> <p>23 for the transactional data. And we're open to</p> <p>24 meeting and conferring, which wasn't done prior to</p> <p>25 this. And there's better ways to access that data.</p>

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<p>1 He can testify as to his personal knowledge.</p> <p>2 MR. BJORK: Okay.</p> <p>3 (Exhibit 21 marked for identification.)</p> <p>4 MR. BJORK: Chris, I will tell you for</p> <p>5 your identification these are extracts from -- the</p> <p>6 first page is DAY-DATA000001 -- or 004, rather.</p> <p>7 And the second two pages are extracts from</p> <p>8 DAY-DATA000001.</p> <p>9 THE WITNESS: How many pages should I</p> <p>10 have?</p> <p>11 MR. BJORK: Three.</p> <p>12 MR. ONDECK: Yeah, I object to the</p> <p>13 authenticity of this document because the copy I'm</p> <p>14 holding doesn't have those Bates numbers. But he</p> <p>15 can answer.</p> <p>16 MR. BJORK: Okay.</p> <p>17 BY MR. BJORK:</p> <p>18 Q. Mr. Rehm, have you ever examined or</p> <p>19 looked at any of Daybreak's transactional data that</p> <p>20 was produced in the case?</p> <p>21 A. Probably not extensively.</p> <p>22 Q. Okay. I'll ask you a few questions about</p> <p>23 some of the -- some of the fields here. Do your</p> <p>24 best to answer them. I realize you weren't</p> <p>25 designated as the 30(b)(6) deponent on this topic,</p>	<p>1 you see that?</p> <p>2 A. Uh-huh.</p> <p>3 Q. Do you know what that denotes?</p> <p>4 A. I would be guessing, but I'm thinking W</p> <p>5 stands for white; W-E stands for whole egg. But</p> <p>6 I'm surmising. I do not know definitively.</p> <p>7 Q. Okay. And then if you move to the next</p> <p>8 column, it's Price, and then just to the right of</p> <p>9 that there's a column that's also not labeled and</p> <p>10 there's the letter C --</p> <p>11 A. Uh-huh.</p> <p>12 Q. -- that goes down, or C-A-W or M. Do you</p> <p>13 know what those letters stand for?</p> <p>14 A. I believe C stands for contract. C-A-W</p> <p>15 stands for contract animal welfare. So that's a</p> <p>16 different pricing mechanism. And M probably stands</p> <p>17 for market.</p> <p>18 Q. Under the price column, in the last four</p> <p>19 rows there seems to be, you know, a rather large</p> <p>20 number as compared to the prices in the first --</p> <p>21 first four rows, 245.8 245.3, 332.</p> <p>22 A. I'm sorry, where are you looking?</p> <p>23 Q. If you look at the price column. I'm</p> <p>24 sorry.</p> <p>25 A. Yeah, it would appear to me that there is</p>
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<p>1 but we'd like to know your individual opinions on</p> <p>2 the questions I'm going to ask. If you look at the</p> <p>3 third column over, the title of the column is B-O-L</p> <p>4 Pound. Can you -- do you have any idea what that</p> <p>5 means?</p> <p>6 A. Bill of lading number.</p> <p>7 Q. Could it refer to anything else?</p> <p>8 A. Not to my knowledge.</p> <p>9 Q. How about the next column over, P-E-A?</p> <p>10 A. I don't know what PEA stands for.</p> <p>11 Q. Okay.</p> <p>12 A. I believe every load of liquid that we</p> <p>13 produce has a PEA number. But I don't know what</p> <p>14 that means.</p> <p>15 Q. Okay. So it's unique to each load of</p> <p>16 liquid egg, is what you're saying?</p> <p>17 A. Each load of liquid egg that we sell and</p> <p>18 deliver has a PEA number, but I do not know what</p> <p>19 those initials stand for.</p> <p>20 Q. Okay. Understood. If you move on over,</p> <p>21 there's a column titled Wait. Do you see that?</p> <p>22 A. Uh-huh.</p> <p>23 Q. And the column just to the right of that,</p> <p>24 there's no title for it, but if you look at the</p> <p>25 first four rows, there's either a W or a W-E. Do</p>	<p>1 a decimal issue. We don't sell our product at</p> <p>2 \$245.80. Pick your multiplier.</p> <p>3 Q. So you think that may be a --</p> <p>4 A. I think there's -- a decimal is just</p> <p>5 simply in the wrong spot.</p> <p>6 Q. Do any of these fields or these column</p> <p>7 titles refer to the product being sold that we</p> <p>8 could identify? Looking at for instance -- let's</p> <p>9 take, for example, there's -- the first row is</p> <p>10 C-K-S-M-N. Do you see that for the customer?</p> <p>11 A. Yeah.</p> <p>12 Q. Within that row can you tell from that</p> <p>13 what the product being sold is?</p> <p>14 A. I know this product is liquid,</p> <p>15 unpasteurized product, but --</p> <p>16 Q. But are you able to tell that from --</p> <p>17 A. Because it's sold in weight. We sell our</p> <p>18 liquid by weight. How many -- by pounds, not by</p> <p>19 dozens. Because it has lost its identity as a</p> <p>20 dozen because we've separated it from -- we</p> <p>21 separated the egg from the shell and we're selling</p> <p>22 pounds of liquid to our customers.</p> <p>23 Q. Okay. At what level does Daybreak track</p> <p>24 product types that it sells? You know, do you</p> <p>25 track it by -- by pounds, is that the way that</p>

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<p>1 you -- strike that. Scratch that.</p> <p>2 On the customer column there appears</p> <p>3 to be abbreviations for certain of the customers.</p> <p>4 A. Uh-huh.</p> <p>5 Q. Are there any other documents that</p> <p>6 Daybreak has that would indicate the full names for</p> <p>7 those abbreviations, that you're aware of, or do</p> <p>8 you know where we could find that information?</p> <p>9 A. How about if I just tell you?</p> <p>10 Q. Well, we have a lot of data, and this is</p> <p>11 just a subset of it.</p> <p>12 A. CKS, Cargill Kitchen Solutions; SF, Sunny</p> <p>13 Fresh.</p> <p>14 Q. Uh-huh.</p> <p>15 A. Government Commodity/SF, we were working</p> <p>16 with Cargill and we delivered it to -- we won a bid</p> <p>17 for commodity product that we replaced through an</p> <p>18 arbitrage process with Cargill. MG Waldbaum,</p> <p>19 Gaylord, Minnesota, I think speaks for itself.</p> <p>20 Q. But you're not aware of any document that</p> <p>21 gives the full names for these abbreviations?</p> <p>22 A. We have three main customers, Cargill,</p> <p>23 Michael's, and Deb-El.</p> <p>24 MR. ONDECK: Yeah, I object under the</p> <p>25 best evidence rule. We would be happy to meet and</p>	<p>1 have any knowledge about this, that you know of, or</p> <p>2 that might be able to provide some of the</p> <p>3 information that I've --</p> <p>4 A. You know, there's no header, there's</p> <p>5 nothing on here. You know, I don't know if you</p> <p>6 redacted any portion off the top of here. I don't</p> <p>7 have a clue where you got this from. And I don't</p> <p>8 mean to be argumentative of you -- with you, but,</p> <p>9 you know, I don't know if this is the document in</p> <p>10 its entirety or not.</p> <p>11 Q. Understood. But --</p> <p>12 A. So I mean --</p> <p>13 Q. Questions related to transaction data</p> <p>14 should be directed to you; correct?</p> <p>15 A. Yeah. But, I mean, you're digging into a</p> <p>16 layer of the onion that's down at the core. You</p> <p>17 know, at the end of the day, Daybreak's business</p> <p>18 model is to sell raw, unpasteurized, liquid egg to</p> <p>19 three main customers. Do we end up having a few</p> <p>20 other customers in the process? Sure, because we</p> <p>21 cannot perfectly match our production to what those</p> <p>22 contracts say every week. So we might be a little</p> <p>23 long, might be a little short one week. But what</p> <p>24 you're trying to get at here I don't know.</p> <p>25 Q. Understood. Just let me look over my</p>
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<p>1 confer on this and, you know, provide a key to the</p> <p>2 extent that you are interested in that. All you</p> <p>3 have to do is ask in the normal process.</p> <p>4 MR. BJORK: Okay. We can talk about</p> <p>5 that.</p> <p>6 MR. ARANOFF: Just for the record -- this</p> <p>7 is Ron Aranoff. I mean, I didn't go into these</p> <p>8 topics during my examination, I just want the</p> <p>9 record to be clear, because of the assertions that</p> <p>10 there were other people at the company that would</p> <p>11 be more knowledgeable about this and that we would</p> <p>12 be able to resolve this. So I'm preserving my</p> <p>13 right to inquire of that person if and when that</p> <p>14 becomes necessary.</p> <p>15 MR. ONDECK: I understand. We're going</p> <p>16 to just state on the record and -- with our</p> <p>17 objection that we'd like to first meet and confer.</p> <p>18 MR. ARANOFF: I'm always happy to meet</p> <p>19 and confer.</p> <p>20 BY MR. BJORK:</p> <p>21 Q. Mr. Rehm, before you testified that you</p> <p>22 were the most appropriate person to testify to</p> <p>23 transactional data related questions; correct?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. Is there anyone else that would</p>	<p>1 notes. I just have a couple more questions. Have</p> <p>2 you ever -- was Daybreak ever contacted by any</p> <p>3 governmental entity recording potential antitrust</p> <p>4 violations?</p> <p>5 MR. ONDECK: Objection, ambiguous.</p> <p>6 THE WITNESS: I'm not sure if this is</p> <p>7 correct or not, but the state of Florida contacted</p> <p>8 us, and Chris has handled that process. And to the</p> <p>9 best of my knowledge, that's state. But I'm not</p> <p>10 sure if that was in connection with antitrust or</p> <p>11 what it was specifically in connection with.</p> <p>12 BY MR. BJORK:</p> <p>13 Q. When did that happen? When did they make</p> <p>14 that contact?</p> <p>15 A. Subsequent to the filing of this</p> <p>16 litigation. But I -- what year specifically, I'm</p> <p>17 sorry.</p> <p>18 Q. Do you recall how they made the contact?</p> <p>19 A. No.</p> <p>20 Q. And you immediately forwarded -- strike</p> <p>21 that. You personally never had any communications</p> <p>22 with anyone from the state of Florida?</p> <p>23 A. Correct.</p> <p>24 Q. Did anyone from Daybreak have any</p> <p>25 communications with the government entity from the</p>

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<p>1 state of Florida regarding this investigation?</p> <p>2 A. That would be a correct statement.</p> <p>3 Nobody else -- nobody did.</p> <p>4 Q. Nobody did. Besides Chris. Do you</p> <p>5 remember who from the state of Florida contacted</p> <p>6 you?</p> <p>7 A. No.</p> <p>8 Q. You don't remember what government entity</p> <p>9 it was?</p> <p>10 A. Not specifically, no. I'd be guessing.</p> <p>11 Q. Do you remember the name of the</p> <p>12 individual?</p> <p>13 A. No.</p> <p>14 Q. Did the US Department of Justice ever</p> <p>15 contact Daybreak with regard to an investigation</p> <p>16 into antitrust violations?</p> <p>17 A. No.</p> <p>18 Q. You said earlier that you were involved</p> <p>19 in Daybreak's collection of documents in the case;</p> <p>20 correct?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Who else from Daybreak was</p> <p>23 involved in the collection?</p> <p>24 MR. ONDECK: Objection. This is another</p> <p>25 one he can only testify as to personal knowledge.</p>	<p>1 BY MR. BJORK:</p> <p>2 Q. How did you know what documents to look</p> <p>3 for in your document collection?</p> <p>4 A. I provided the documents to our -- to</p> <p>5 Chris and his firm.</p> <p>6 Q. Right.</p> <p>7 A. I mean, my entire office, they grabbed</p> <p>8 every file and went through everything.</p> <p>9 Q. You grabbed every file?</p> <p>10 A. They grabbed everything. All my files,</p> <p>11 they took them.</p> <p>12 Q. Every file in your office, they took?</p> <p>13 MR. ONDECK: We're getting close to legal</p> <p>14 advice and work product, but you can -- you can</p> <p>15 answer.</p> <p>16 THE WITNESS: Chris and his team came to</p> <p>17 our office and then they came -- I'm not sure</p> <p>18 which -- who specifically from his firm came into</p> <p>19 my office and went through drawer by drawer and</p> <p>20 they grabbed files and took them with them.</p> <p>21 BY MR. BJORK:</p> <p>22 Q. Okay. Did you ever see the document</p> <p>23 requests that were issued by the direct purchaser</p> <p>24 plaintiffs?</p> <p>25 A. Probably I have somewhere along the line.</p>
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<p>1 BY MR. BJORK:</p> <p>2 Q. To the extent you know.</p> <p>3 A. Lisa, Pat, Dick, Loren, Tony, Chris, I</p> <p>4 believe.</p> <p>5 Q. Lisa's last name is?</p> <p>6 A. Tucek.</p> <p>7 Q. What did you personally do to collect</p> <p>8 documents?</p> <p>9 A. They were in my office. They were right</p> <p>10 there for me.</p> <p>11 Q. So you collected the paper documents in</p> <p>12 your office?</p> <p>13 A. Correct.</p> <p>14 Q. Okay. Did you search your e-mail?</p> <p>15 A. I let our IT person do whatever searching</p> <p>16 needed to be done on the Internet. Excuse me, I</p> <p>17 shouldn't say the Internet. On my computer.</p> <p>18 MR. ONDECK: Same objection to the line</p> <p>19 of questioning. We're not providing him as a</p> <p>20 30(b)(6) for this topic.</p> <p>21 MR. ARANOFF: This is Ron Aranoff. I</p> <p>22 have my same reservation of rights with respect to</p> <p>23 that in conjunction with the fact that he's not the</p> <p>24 witness most knowledgeable, at least according to</p> <p>25 Chris.</p>	<p>1 Q. Okay. But you didn't consult those --</p> <p>2 those documents as part of your document</p> <p>3 collection?</p> <p>4 A. I consulted --</p> <p>5 MR. ONDECK: Objection.</p> <p>6 THE WITNESS: I consulted with our legal</p> <p>7 counsel.</p> <p>8 BY MR. BJORK:</p> <p>9 Q. Okay. Does Daybreak have a central</p> <p>10 server?</p> <p>11 MR. ONDECK: Same objection. He's not</p> <p>12 the corporate designee.</p> <p>13 BY MR. BJORK:</p> <p>14 Q. Understood.</p> <p>15 A. I believe we do. I can turn computers on</p> <p>16 and off, but don't get into -- you know, do what I</p> <p>17 need to on the computer.</p> <p>18 MR. ARANOFF: And again, this is Ron</p> <p>19 Aranoff. Same reservation of rights.</p> <p>20 MR. BJORK: Right. And we reserve our</p> <p>21 rights too to depose the 30(b)(6) witness on this</p> <p>22 topic, but we're asking --</p> <p>23 MR. ONDECK: We're not -- sorry for</p> <p>24 interrupting. We're not stating that he's not the</p> <p>25 most knowledgeable person, we're stating that we're</p>

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<p>1 not designating him because, subject to a meet and</p> <p>2 confer, there are other ways this should have been</p> <p>3 gotten.</p> <p>4 MR. BJORK: Well, you sent us your</p> <p>5 30(b)(6) objections I believe it was two days before</p> <p>6 the deposition.</p> <p>7 MR. ONDECK: You noticed his personal</p> <p>8 deposition in April. 60 days after that, less than</p> <p>9 two weeks before this deposition, the week before</p> <p>10 the Fourth of July, you sent the 30(b)(6) notice.</p> <p>11 We can fight about that all you want. And we sent</p> <p>12 you something saying meet and confer, and my phone</p> <p>13 never rang. So the onus is on you and all the</p> <p>14 plaintiffs in the case. Call us if you would like</p> <p>15 to meet and confer, otherwise -- we're not saying</p> <p>16 he's not the best person, we're saying let's meet</p> <p>17 and confer.</p> <p>18 MR. BJORK: We can have that discussion</p> <p>19 on another date.</p> <p>20 BY MR. BJORK:</p> <p>21 Q. Mr. Rehm, do you know what a litigation</p> <p>22 hold is?</p> <p>23 A. My assumption is that it's, if you're</p> <p>24 involved in a litigation, you need to hold and not</p> <p>25 dispose of documents.</p>	<p>1 as to what our advice was.</p> <p>2 BY MR. BJORK:</p> <p>3 Q. I don't want to know the specifics or the</p> <p>4 substance of your communications. Bear with me one</p> <p>5 minute. I think I'm done, but just let me go</p> <p>6 through my notes again. Just a minute.</p> <p>7 MR. BJORK: That's all I have.</p> <p>8 THE VIDEOGRAPHER: Okay. I've got only</p> <p>9 about five minutes left on this disc, so --</p> <p>10 MR. ONDECK: We're going to have a small</p> <p>11 redirect, small redirect, but it may be more than</p> <p>12 five minutes.</p> <p>13 THE VIDEOGRAPHER: Okay, then we should</p> <p>14 go ahead and switch it.</p> <p>15 MR. ONDECK: Yeah, let's do that.</p> <p>16 THE VIDEOGRAPHER: This will conclude</p> <p>17 disc number three at 4:08 p.m.</p> <p>18 (Break taken.)</p> <p>19 THE VIDEOGRAPHER: We're back on the</p> <p>20 record, the beginning of disc number four of the</p> <p>21 deposition of William Rehm. Today's date July 10,</p> <p>22 2013; the time 4:21 p.m.</p> <p>23 E X A M I N A T I O N</p> <p>24 BY MR. GREENE:</p> <p>25 Q. Mr. Rehm, we met before. My name is</p>
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<p>1 Q. Do you know if a litigation hold was ever</p> <p>2 put in place with respect to this case?</p> <p>3 A. Yes.</p> <p>4 Q. When did that happen?</p> <p>5 A. I don't know the specific date.</p> <p>6 Q. Do you know approximately when it went</p> <p>7 into effect?</p> <p>8 A. No. Again, we followed the advice of</p> <p>9 counsel.</p> <p>10 Q. How was the litigation hold put into</p> <p>11 place?</p> <p>12 A. I don't know at this time.</p> <p>13 Q. Do you know who would have received it?</p> <p>14 A. All the appropriate people that needed to</p> <p>15 hold documents.</p> <p>16 Q. How many people would you say that would</p> <p>17 have been?</p> <p>18 MR. ONDECK: Objection to the whole line</p> <p>19 of questioning. You could just as easily answer "I</p> <p>20 followed the advice of counsel" and I'm gonna say</p> <p>21 "I direct you not to answer." But you can go ahead</p> <p>22 and answer.</p> <p>23 THE WITNESS: We followed the advice of</p> <p>24 counsel.</p> <p>25 MR. ONDECK: I direct you not to answer</p>	<p>1 William Greene. I'm representing Michael Foods.</p> <p>2 And I have some questions for you. You testified</p> <p>3 this morning about Exhibit 15. I wonder if we can</p> <p>4 get Exhibit 15 in front of the witness. This is</p> <p>5 the -- some handwritten notes.</p> <p>6 A. Okay.</p> <p>7 Q. I believe your testimony was that these</p> <p>8 notes concerned a meeting that included some</p> <p>9 persons who were in favor of the hundred percent</p> <p>10 rule and some who were opposed to the hundred</p> <p>11 percent rule; is that correct?</p> <p>12 A. Yes.</p> <p>13 Q. And I believe you went through and</p> <p>14 identified, based on your understanding, some of</p> <p>15 the individuals -- withdrawn. I think you -- you</p> <p>16 were asked about particular individuals and whether</p> <p>17 you believe they were opposed or in favor of the</p> <p>18 hundred percent rule, but I'm not sure you got to</p> <p>19 all six individuals who are listed here. So let me</p> <p>20 just ask you. Regarding the name Bill Gaucher, you</p> <p>21 see that name there?</p> <p>22 A. Yes.</p> <p>23 Q. To the best of your understanding, at</p> <p>24 that meeting, what was Mr. Gaucher's position on</p> <p>25 the hundred percent rule?</p>

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<p>1 A. He was opposed to the hundred percent</p> <p>2 rule.</p> <p>3 Q. Okay. And just a reminder, Mr. Gaucher</p> <p>4 was affiliated with which company?</p> <p>5 A. Michael Foods.</p> <p>6 Q. I'd like to -- before I do that. I</p> <p>7 believe this morning you testified that Daybreak</p> <p>8 had grown over the years covered by this</p> <p>9 litigation; correct?</p> <p>10 A. Yes.</p> <p>11 Q. I'll talk about the period from 1999 to</p> <p>12 2008. Did Daybreak grow during that period?</p> <p>13 A. Yes, we did.</p> <p>14 MR. ARANOFF: Objection.</p> <p>15 BY MR. GREENE:</p> <p>16 Q. And so measured in, say, number of layers</p> <p>17 owned by Daybreak, how much did it grow?</p> <p>18 A. I believe in '99 we had three million</p> <p>19 chickens, and by '98 we were at nine-and-a-half</p> <p>20 million chickens.</p> <p>21 Q. I'm sorry, which --</p> <p>22 A. Roughly three million in '99 to</p> <p>23 nine-and-a-half million in 2008.</p> <p>24 Q. Okay. And how did that growth occur?</p> <p>25 A. Through customers' desires for more</p>	<p>1 know, that will then put us in a position to desire</p> <p>2 to grow and expand a facility.</p> <p>3 Q. Are there any prerequisites that you look</p> <p>4 for before deciding to construct new facilities?</p> <p>5 MR. ARANOFF: Objection.</p> <p>6 THE WITNESS: It all starts for us -- it</p> <p>7 all starts with the customer, not with wanting to</p> <p>8 grow or build a new facility.</p> <p>9 BY MR. GREENE:</p> <p>10 Q. Okay. And if a customer tells you they</p> <p>11 want more supply, what, if anything, would you want</p> <p>12 from the customer before you'd be willing to build</p> <p>13 additional facilities?</p> <p>14 A. We would negotiate a long-term contract</p> <p>15 that's executed by both parties, and we will grow</p> <p>16 it -- build more, go buy and expand, whatever it</p> <p>17 takes, depending upon what they're specifically</p> <p>18 looking for, where, when and how, to get that done.</p> <p>19 Q. Why would a long-term contract be</p> <p>20 important to you?</p> <p>21 A. For Daybreak, in our model, we lever our</p> <p>22 balance sheet with bank financing to accomplish the</p> <p>23 expansions that are done. And we can do that</p> <p>24 because the bank has faith in us, trusts us, they</p> <p>25 believe in us, they believe that we know what we're</p>
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<p>1 products. Daybreak -- Daybreak's philosophy on</p> <p>2 expansion is that we will grow because we have a</p> <p>3 customer that desires more product. Unlike the</p> <p>4 Field of Dreams that says "build it and they will</p> <p>5 come," we go get and work with a customer for more</p> <p>6 product, and then we go acquire, build, expand to</p> <p>7 supply that request.</p> <p>8 Q. So part of the growth that you described,</p> <p>9 that occurred through the construction of new</p> <p>10 facilities?</p> <p>11 A. Yes.</p> <p>12 Q. And how did you decide whether and when</p> <p>13 to build new facilities?</p> <p>14 A. It was predicated on the customer</p> <p>15 demands. Customer product demands, I should say.</p> <p>16 Q. And can you explain -- when you say</p> <p>17 predicated on customer demands, what would be</p> <p>18 necessary to sort of persuade you to construct a</p> <p>19 new facility?</p> <p>20 A. Again, it's -- our business model is</p> <p>21 predicated on a long-term contract that uses a base</p> <p>22 price with adjustments on the Chicago Board of</p> <p>23 Trade. And that's a premise that we start with.</p> <p>24 And that when a customer requests more product</p> <p>25 utilizing that type of program, we will -- you</p>	<p>1 doing. And just as importantly, we have the</p> <p>2 contract to support the stability of our cash flow</p> <p>3 throughout -- through a long-term period of time to</p> <p>4 support the funding of that debt.</p> <p>5 Q. When you build new facilities, did you</p> <p>6 obtain financing from a financial institution?</p> <p>7 MR. ARANOFF: Objection.</p> <p>8 THE WITNESS: Yes.</p> <p>9 BY MR. GREENE:</p> <p>10 Q. In other words, you had one or more</p> <p>11 lenders?</p> <p>12 A. We have a group. We have a bank group.</p> <p>13 Q. And did those lenders communicate to you</p> <p>14 any requirements that were necessary for you to</p> <p>15 satisfy before they would finance new construction?</p> <p>16 A. They wanted to see the contract.</p> <p>17 Q. When you say the contract --</p> <p>18 A. They want to see the contract for the</p> <p>19 product that would be -- they want to see the</p> <p>20 contract for the product we would produce from the</p> <p>21 expansion, to support that growth, that expansion,</p> <p>22 that additional debt.</p> <p>23 Q. When you say the "contract," do you mean</p> <p>24 the contract with the prospective customer?</p> <p>25 A. Correct.</p>

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<p>1 Q. And that would be the customer that was</p> <p>2 going to be purchasing the output from the</p> <p>3 expansion?</p> <p>4 A. Correct.</p> <p>5 MR. GREENE: Go ahead and mark this as</p> <p>6 the next exhibit number.</p> <p>7 (Exhibit 22 marked for identification.)</p> <p>8 BY MR. GREENE:</p> <p>9 Q. I'm going to show you -- I'll start with</p> <p>10 the Bates number, then I'll identify the document.</p> <p>11 Exhibit 22, Bates number MFI0299891 through 914</p> <p>12 And this is a document that reads at the top,</p> <p>13 Supply Agreement Confidential. And the first</p> <p>14 paragraph reads, "This agreement, made and entered</p> <p>15 into as of this 2 day of December, 2003, by and</p> <p>16 between MG Waldbaum Company, a Nebraska</p> <p>17 corporation, d/b/a the Michael Foods and Products</p> <p>18 Company, ('Michael') and Daybreak Foods, Inc., a</p> <p>19 Wisconsin corporation ('producer.')</p> <p>20 Mr. Rehm, you can certainly look</p> <p>21 through the document; I know it's a lengthy</p> <p>22 document. And I will point out, before I ask you</p> <p>23 any questions, that if you look at the -- page six,</p> <p>24 which ends with Bates number 896, there are</p> <p>25 signatures on the document. Do you see that?</p>	<p>1 2003 and continue until December 31, 2009." Do you</p> <p>2 see that?</p> <p>3 A. Yes.</p> <p>4 Q. That would be a period of six-and-a-half</p> <p>5 years; is that correct?</p> <p>6 A. Yes.</p> <p>7 Q. And would that qualify, in your mind, as</p> <p>8 a long-term contract?</p> <p>9 A. Yes.</p> <p>10 Q. I want to direct your attention to the</p> <p>11 quantity page, exhibit -- I should say --</p> <p>12 withdrawn. I want to direct your attention to page</p> <p>13 seven, ends with Bates number 897, Exhibit A.</p> <p>14 A. Okay.</p> <p>15 Q. And you'll see that section three refers</p> <p>16 to quantity. Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. And the quantity, under this contract it</p> <p>19 says 56,500,000 pounds annual volume; is that</p> <p>20 correct?</p> <p>21 A. That's the expectation of the annual</p> <p>22 volume from the facility, correct.</p> <p>23 Q. When you say the expectation, what do you</p> <p>24 mean?</p> <p>25 A. This contract was, I use the term a</p>
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<p>1 A. Yes.</p> <p>2 Q. Okay. Do you recognize Exhibit 22?</p> <p>3 A. Yes.</p> <p>4 Q. What is Exhibit 22?</p> <p>5 A. It is our contract between Daybreak and</p> <p>6 Michael Foods for the product we produce for them</p> <p>7 on a long-term basis.</p> <p>8 Q. And what product is that?</p> <p>9 A. In this case it would be liquid,</p> <p>10 unpasteurized, whole egg.</p> <p>11 Q. And you referred earlier to, I think you</p> <p>12 used the term "inline" to describe some eggs?</p> <p>13 A. That's correct.</p> <p>14 Q. Does this contract call for production of</p> <p>15 inline egg?</p> <p>16 MR. ARANOFF: Objection.</p> <p>17 THE WITNESS: The egg that is produced to</p> <p>18 fill this contract comes from an inline facility.</p> <p>19 BY MR. GREENE:</p> <p>20 Q. The term -- paragraph one under the</p> <p>21 supply agreement indicates the term, and it's --</p> <p>22 the sentence under paragraph one reads, "Unless</p> <p>23 otherwise terminated in accordance with the</p> <p>24 provisions of section eleven thereof, the initial</p> <p>25 term of this agreement will commence on April 27,</p>	<p>1 make-it-take-it. Whatever we produced at the farm</p> <p>2 Michael's would take, but the expectation was that</p> <p>3 it would average in the area of 56-and-a-half</p> <p>4 million pounds annually.</p> <p>5 Q. When you say "the farm," what are you</p> <p>6 referring to?</p> <p>7 A. Oak Ridge Farm. The Oak Ridge facility.</p> <p>8 Q. So if one year -- under the contract, if</p> <p>9 one year the Oak Ridge production was a little bit</p> <p>10 more than 56.5 million, that would become the</p> <p>11 quantity term for that year; is that correct?</p> <p>12 A. Correct.</p> <p>13 Q. And if it was a little bit less than</p> <p>14 56.5 million, that would be the quantity term for</p> <p>15 that year; correct?</p> <p>16 A. Correct.</p> <p>17 Q. Was there any discussion with Michael</p> <p>18 Foods about expansion in connection with this</p> <p>19 contract?</p> <p>20 A. We've talked about it at different times,</p> <p>21 yes.</p> <p>22 Q. And in connection with this particular</p> <p>23 contract -- withdrawn. Did Daybreak expand its</p> <p>24 facilities as a result of this contract,</p> <p>25 Exhibit 22?</p>

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<p>1 A. Yes. Excuse me, but they're talking on 2 the back side here. 3 MR. ONDECK: Could people on the phone 4 mute their phones, please. 5 BY MR. GREENE: 6 Q. Do you recall how many layers were -- 7 withdrawn. Do you recall the -- the increased 8 capacity that was added to Daybreak as a result of 9 Exhibit 22? 10 A. No, I don't. 11 Q. Were there other occasions where Daybreak 12 expanded its facilities as a result of a long-term 13 purchase agreement with Michael Foods? 14 MR. ARANOFF: Objection. 15 THE WITNESS: I believe so, yes. 16 BY MR. GREENE: 17 Q. Exhibit 22, the supply agreement, did you 18 provide Exhibit 22 to the lenders that provided 19 financing for the expansion? 20 A. Yes. 21 Q. Was that a requirement? 22 A. Yes. 23 Q. You talked this morning a bit about 24 inline production. Is the use of inline production 25 important for Daybreak to be able to meet product</p>	<p>1 Q. Okay. This is Chris Ondeck from the law 2 firm of Crowell Moring representing Daybreak and 3 also the witness, Mr. Rehm, in this deposition. 4 Good afternoon, Mr. Rehm. I'm going to ask you a 5 brief redirect. 6 I'm going to direct your attention to 7 Exhibit 16, which you've been asked about 8 previously. If you could please turn to that 9 exhibit. Was that document previously shown to 10 you? 11 A. Yes. 12 Q. What were you asked about, if anything, 13 about this document? 14 MR. ARANOFF: Can I have a copy of the 15 document? 16 MR. ONDECK: This is your Exhibit 16. 17 MR. ARANOFF: Go ahead. Thanks. 18 BY MR. ONDECK: 19 Q. In particular with regard to whether or 20 not Daybreak became UEP certified. 21 MR. ARANOFF: Objection. 22 THE WITNESS: This is a document 23 where -- it's an e-mail from Gene Gregory, I'm 24 copied on it, and it is sent to, I believe two 25 members of the United Egg Producer's staff, where</p>
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<p>1 specifications? 2 A. The use -- inline facilities 3 significantly enhance our ability to meet 4 consistently the product specifications for our 5 customers. It's not impossible with offline, but 6 it's significantly easier and we get significantly 7 better microbial counts from inline production. 8 Q. Could a company buy breaking eggs that it 9 did not produce itself and still satisfy those 10 specifications? 11 A. To be able to consistently meet or exceed 12 those expectations would be extremely difficult to 13 do if you were buying eggs from somebody you 14 didn't -- if you were buying eggs that you didn't 15 produce yourself and did not control the full 16 process of from farm through to delivery to the 17 customer. 18 MR. GREENE: No further questions. 19 MR. ONDECK: Can I ask my one question 20 and then you can -- 21 MR. ARANOFF: I have a redirect. 22 MR. ONDECK: All right. Then so -- 23 MR. ARANOFF: You go ahead, then I'll go 24 E X A M I N A T I O N 25 BY MR. ONDECK:</p>	<p>1 Gene Gregory got out in front of himself on the UEP 2 certified number previously owned by day lay, 3 indicating that New Day and Daybreak were in 4 compliance with the UEP certified one hundred 5 percent rule. 6 BY MR. ONDECK: 7 Q. What was the date of this document? 8 A. July 10, 2007. 9 MR. ONDECK: Okay. What exhibit number 10 are we up to? I'm going to show you one document. 11 (Exhibit 23 marked for identification.) 12 BY MR. ONDECK: 13 Q. So Mr. Rehm, I've just handed you a 14 one-page document that has Bates number DAY000361. 15 Do you recognize this document? 16 A. It's an e-mail that I received from Gene 17 Gregory. 18 Q. And what is the date on this document? 19 A. September 4, 2007. 20 Q. Subsequent to the July document that we 21 just looked at? 22 A. Yes. 23 Q. And what is -- what's going on in this 24 document? 25 MR. ARANOFF: Objection.</p>

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<p>1 MR. BJORK: Objection.</p> <p>2 MR. ARANOFF: Vague, among other things.</p> <p>3 THE WITNESS: Gene Gregory is informing</p> <p>4 us that we do not qualify for the UEP certified</p> <p>5 program because of the hundred percent rule.</p> <p>6 BY MR. ONDECK:</p> <p>7 Q. And is this the final outcome or not?</p> <p>8 MR. ARANOFF: Objection.</p> <p>9 THE WITNESS: Yes, this is the final</p> <p>10 outcome. We do not qualify for the UEP certified</p> <p>11 program because of the hundred percent rule.</p> <p>12 BY MR. ONDECK:</p> <p>13 Q. And so, just ask you again, is Daybreak</p> <p>14 now, or has it ever been, a certified -- a member</p> <p>15 of the UEP certified program or any of the names</p> <p>16 under which it's operated?</p> <p>17 A. We have never been in --</p> <p>18 MR. ARANOFF: Objection, compound, asked</p> <p>19 and answered. Variety of other things.</p> <p>20 THE WITNESS: We have never been a UEP</p> <p>21 certified company, we have never paid any of the</p> <p>22 UEP certified dues or marketing assessments that</p> <p>23 are attached thereto.</p> <p>24 MR. ONDECK: No further questions.</p> <p>25 E X A M I N A T I O N</p>	<p>1 I'd say no. I'm not sure. I'd have to read the</p> <p>2 contract in its entirety that is part of the</p> <p>3 exhibit here.</p> <p>4 BY MR. ARANOFF:</p> <p>5 Q. Do you have any understanding with</p> <p>6 Michael Foods as to -- well, withdrawn. Is Michael</p> <p>7 Foods paying for any portion of your defense in</p> <p>8 this action?</p> <p>9 A. No.</p> <p>10 Q. Okay. Do you have any relationship with</p> <p>11 Michael Foods where they are paying for any of your</p> <p>12 expenses associated with this litigation?</p> <p>13 A. No.</p> <p>14 Q. How about, same question for Cargill?</p> <p>15 A. No.</p> <p>16 Q. Same question for Deb-El Foods?</p> <p>17 A. No.</p> <p>18 Q. And so to the best of your understanding,</p> <p>19 your litigation expenses are being paid entirely by</p> <p>20 Daybreak?</p> <p>21 A. No.</p> <p>22 Q. Who's paying for your litigation</p> <p>23 expenses?</p> <p>24 A. We have an insurance policy that has paid</p> <p>25 a portion of it, and we have paid a portion of it.</p>
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<p>1 BY MR. ARANOFF:</p> <p>2 Q. Okay, just a short redirect. This is Ron</p> <p>3 Aranoff. Good afternoon, again, Mr. Rehm.</p> <p>4 A. Hello.</p> <p>5 Q. It's been a long day, so I'll try to make</p> <p>6 it quick. Prior to your examination by Mr. Greene,</p> <p>7 which took place a moment ago, did you have an</p> <p>8 opportunity to confer with him in advance about the</p> <p>9 subject of your testimony?</p> <p>10 A. No.</p> <p>11 Q. Okay. Prior to your -- prior to your</p> <p>12 examination by Mr. Ondeck did you have an</p> <p>13 opportunity to confer with him about the subject of</p> <p>14 your testimony?</p> <p>15 A. No.</p> <p>16 Q. You had no discussion about the subject</p> <p>17 of your testimony either with Mr. Greene or</p> <p>18 Mr. Ondeck?</p> <p>19 A. That's correct.</p> <p>20 Q. Okay. Do you have any -- as part of your</p> <p>21 relation -- your business relationship with Michael</p> <p>22 Foods, do you have any indemnification agreement</p> <p>23 with them with respect to your relationship?</p> <p>24 MR. GREENE: Objection, beyond the scope.</p> <p>25 THE WITNESS: I don't believe so, but --</p>	<p>1 Q. And who's your insurance carrier?</p> <p>2 A. I do not know their name right now, but I</p> <p>3 do know that we are about out of coverage.</p> <p>4 MR. ONDECK: I'd just note that I think</p> <p>5 we've stated that in written discovery that we</p> <p>6 produced to you.</p> <p>7 MR. ARANOFF: I'm not quibbling with it,</p> <p>8 I'm just asking the question.</p> <p>9 BY MR. ARANOFF:</p> <p>10 Q. Do you have an understanding as you sit</p> <p>11 here today about what the total amount of coverage</p> <p>12 was?</p> <p>13 A. I believe it was \$2 million in total.</p> <p>14 Q. And do you know how much of that has been</p> <p>15 used?</p> <p>16 A. More than a million nine.</p> <p>17 MR. ARANOFF: Okay. Nothing further from</p> <p>18 me.</p> <p>19 MR. BJORK: Nothing either.</p> <p>20 MR. ARANOFF: Okay, that concludes the</p> <p>21 deposition.</p> <p>22 THE VIDEOGRAPHER: There being nothing</p> <p>23 further, this will conclude the deposition of</p> <p>24 William Rehm. We're off the record at 4:44 p.m.</p> <p>25 Four discs were used.</p>

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1 ACKNOWLEDGMENT OF DEPONENT  
 2 I, WILLIAM REHM, do hereby certify  
 3 that I have read the foregoing transcript of my  
 4 testimony, and further certify that it is a true  
 5 and accurate record of my testimony (with the  
 6 exception of the corrections listed below):

7	Page	Line	Correction
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20			

21 \_\_\_\_\_  
 22 WILLIAM REHM

23 SUBSCRIBED AND SWORN TO BEFORE ME  
 24 THIS \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_.

25 \_\_\_\_\_ MY COMMISSION EXPIRES:

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1 STATE OF WISCONSIN )  
 ) ss.  
 2 COUNTY OF MILWAUKEE )  
 3 I, ANITA KORNBURGER-FOSS, Registered  
 4 Professional Reporter and Notary Public in and  
 5 for the State of Wisconsin, do hereby certify  
 6 that the preceding deposition was recorded by  
 7 me and reduced to writing under my personal  
 8 direction.

9 I further certify that said deposition was  
 10 taken at 780 North Water Street, Milwaukee,  
 11 Wisconsin, on July 10, 2013, commencing at 9:25  
 12 a.m. and concluding at 4:44 p.m.

13 I further certify that I am not a relative  
 14 or employee or attorney or counsel of any of  
 15 the parties, or a relative or employee of such  
 16 attorney or counsel, or financially interested  
 17 directly or indirectly in this action.

18 In witness whereof, I have hereunto set my  
 19 hand and affixed my seal of office at  
 20 Milwaukee, Wisconsin, this 23rd day of July,  
 21 2013.

22 \_\_\_\_\_  
 23 ANITA KORNBURGER-FOSS, RPR - Notary Public  
 24 My commission expires May 13, 2017.  
 25

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